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HISTORY OF THE EARLDOMS

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OF

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STRATHERN, MONTEITH, AND AIRTH:

WITH A REPORT OF

The Proceedings before the House of Lords,

ON

THE CLAIM

OF

ROBERT BARCLAY ALLARDICE, ESQ.

TO

THE EARLDOM OF AIRTH.

BY

SIR HARRIS NICOLAS, G.C.M.



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TO
HUDSON GURNEY, ESQ.
F.R.S. V.P.S.A.

WHO FROM FAMILY CONNECTION HAS
TAKEN GREAT INTEREST IN THE SUBJECT OF THE FOLLOWING PAGES,

This Volume is inscribed,
IN TESTIMONY OF THE EDITOR'S
RESPECT AND ESTEEM.

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P R E F A C E.

THE investigation of the History of the EARLDOMS of STRATHERN, MONTEITH, and AIRTH, in prosecuting the Claim of Mr. BARCLAY ALLARDICE to the latter Dignity, has brought to light so many remarkable facts illustrative of Scottish History, and of the characters of some distinguished Statesmen and Lawyers of the seventeenth century, that the publication of the following sheets will, it is presumed, be an acceptable addition to Historical and Biographical Literature.

By an act of great injustice, Malise Graham, the heir of David Earl of Strathern, son of King Robert the Second, was divested of that Earldom, to satisfy the cupidity of King James the First. At the distance of two hundred years, his descendant, William seventh Earl of Monteith, was involved in ruin for having asserted his right to the Honours, and, what was still more invidious, to the Superiorities and Lands of

which his ancestor had been deprived, (although his pretensions had been formally sanctioned and ratified by King Charles the First,) on the ground that the admission of his status, as heir of Prince David, might affect the rights of the Reigning Family to the Crown of Scotland.

In these transactions, the question of the validity of the marriage of King Robert the Second with Elizabeth Muir, and of the legitimacy of their children, was involved; and the opinions entertained on that delicate point, in the reign of King Charles the First, are no where so fully shown as in the proceedings against the Earl of Monteith.

The jealousy and fears which the Earl of Monteith's claim to the Earldom of Strathern excited, — the crafty machinations of his enemies, — the known and acknowledged falsehood of the statement, that Prince David had died without issue, upon which allegation the Earl's status and rights were denied by sentence of the Court of Session, — and the manner in which the King was induced to consent to the disgrace of a personal favourite, are very remarkable, and throw some light on the secret history of the period.

The sequel to these proceedings was the

grant of the EARLDOM OF AIRTH, by a Patent which stands alone, among the immense variety of Scottish destinations, for its extraordinary terms, and for the still more extraordinary object which it was intended to accomplish.

In the opinion of King Charles's ministers, the heir of Prince David, even when stripped of the Honours of his Royal Ancestor, and after his descent had been solemnly denied, on the part of the Crown, in a Court of Law, was yet too formidable a personage to be permitted to bear the Title of MONTEITH (which his immediate progenitors had enjoyed without dispute for more than two centuries), simply because it had previously been the designation of Princes of the House of Stewart.

Little as law or justice was regarded, it was nevertheless impossible absolutely to take from him the Earldom of Monteith. A plan was therefore devised, by which that Title should become merged in a new Earldom, with which no historical or genealogical recollections could be associated.

Ruined in fortune, and his life endangered by a charge of high treason, the unfortunate Nobleman could offer no resistance ; and, on the pretence of augmenting his Honours, he was created



EARL OF AIRTH, to hold to him and *his heirs*, by Patent, in 1633. To this new territorial Earldom of Airth was annexed the old territorial Earldom of Monteith; and while the Earl was to bear the Title of Airth *only*, he was to retain the Precedency belonging to that of Monteith, his right to the latter Dignity being, by the same instrument, ratified and confirmed.

It was to be expected that a Patent of so anomalous and unprecedented a description should be complicated in its provisions. But the precise object of the Crown is nevertheless perfectly clear; and it is confidently submitted that the only operative parts of the Patent are sufficiently free from ambiguity to have created the Earldom of Airth to the grantee and *his heirs of line*.

The matter is, however, sub judice; and the legal profession can scarcely fail to be interested in reading statements and arguments mainly founded on the elaborate and forcible speech of the present Vice-Chancellor the Right Honourable Sir James Lewis Knight Bruce, the legal and historical erudition of Mr. Thomson, and the research and antiquarian knowledge of Mr. Riddell, in favour of the Claim; — while every thing that could possibly be urged against

giving to the word *heirs*, in the Patent, its usual technical interpretation of *heirs of line*, was brought forward in the ingenious speech of Andrew Rutherford, Esq., the late Lord Advocate.

The APPENDIX contains copies of all the Charters and other Documents referred to in the text; and of two remarkable Narratives, one by Sir Thomas Hope, Advocate to King Charles the First, and the other apparently by the well-known Sir John Scot of Scotstarvet, in defence of their conduct; together with some curious original Letters, and a few other articles illustrative of the Case.

To the Vice-Chancellor Sir James Lewis Knight Bruce, the Author begs leave to offer his best acknowledgments for having revised his able speech; and his thanks for much valuable assistance are especially due to Mr. David Robertson, whose labours in another branch of the Law are well known and appreciated, and who is equally conversant with every thing connected with the history and decisions of Scottish Peerages. He has also to thank Peter Christian, Esq. of Newhaven, for some remarks on Scottish Territorial Earldoms.

25th February, 1842.





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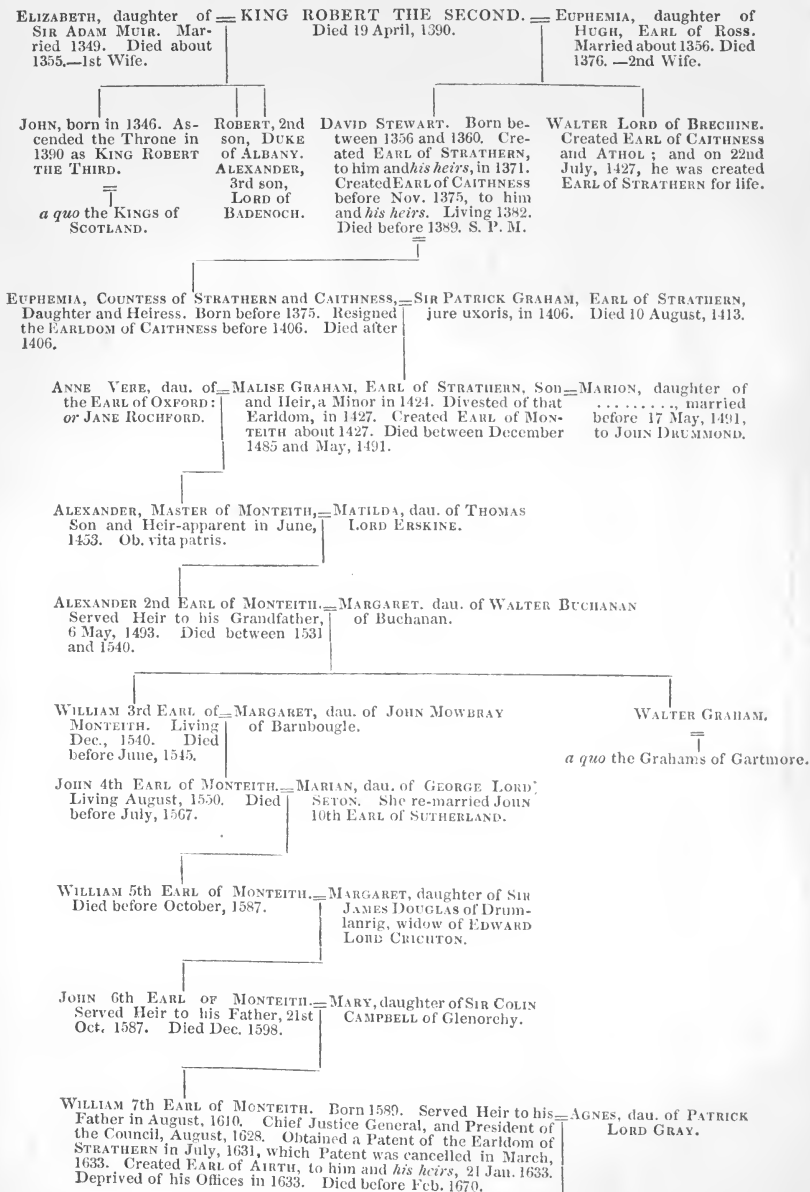
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No. II.—PEDIGREE showing the Descendants of WILLIAM SEVENTH EARL OF MONTEITH and FIRST EARL of AIRTH.

WILLIAM GRAHAM, 7th EARL of MONTEITH—AGNES, daughter of PATRICK and 1st EARL of AIRTH, died before February, 1670.
LORD GRAY.

JOHN GRAHAM, LORD KILPONT, Son and—LADY MARY KEITH, daughter of WILLIAM EARL MARISCHAL.
Married April, 1632.

LADY ELIZABETH, 2nd—WILLIAM, afterwards SIR WILLIAM GRAHAM: he acquired the Lands of Gartmore.
LADY MARY, eldest daughter—SIR JOHN ALLARDICE of Allardice. Died before Nov. 1690.
LADY MARY, daughter of WILLIAM GRAHAM: he acquired the Lands of Gartmore.
Died before her Brother.

JOHN ALLARDICE of Allardice—ELIZABETH, daughter of SIR GEORGE ALLARDICE, baptized 27 August, 1672. Succeeded his Brother in 1691. Served Heir to his Father, 14 October, 1697. Died in October, 1709.
SIR JOHN GRAHAM of GARTMORE, Living died before 1708, S. P.
JAMES HODGE of GLADSMUTH, Advocate.

JAMES ALLARDICE of—MARY, daughter of ALLARDICE. Baptized 25 July, 1693. A Minor at his Father's Death. Buried 21 May, 1728.
MARY HODGE, only Child. Born about 1688—WILLIAM GRAHAM, younger Son of Walter Graham of Gallingad. Died March 31, 1742.
WALTER GRAHAM of Gallingad. Died March 31, 1742.

JAMES ALLARDICE of—ANN, daughter of JAMES GRAHAM. Styled himself EARL of MONTEITH. Confirmed Executor to Sir JOHN GRAHAM. Died in 1783, S. P.
GRIZEL GRAHAM. Born Feb. 1707. Died 12 June, 1779, unmarried.
MARY GRAHAM—JOHN BOGLE. Died 17 Feb. 1787.
MARGARET GRAHAM. Married JOHN COLQUHOUN, and Died in Feb. 1782, S. P.

SARAH ANN ALLARDICE, only Daughter—ROBERT BARCLAY and Heiress. Born 13th July, 1757. Married December, 1776. Divorced in 1793. Married 5 August, 1795, to JOHN NUDD. Died in August, 1833.
JOHN BOGLE, only Son. Married MARGARET WILSON in Aug. 1769. Died in 1803, S. P.
MARY BOGLE, served Heir to SIR WILLIAM GRAHAM of Gartmore, her Great-great-Grandfather, in 1805. Died, unmarried, in November, 1821.
At her decease all the Descendants of LADY ELIZABETH GRAHAM became Extinct.

ROBERT BARCLAY ALLARDICE, Esquire, Son and Heir, THE CLAIMANT. Married MARY DALGARNO, by whom he had issue MARGARET, his only child, who married, at Kensington in Middlesex, 2nd April, 1840, SAMUEL RITCHIE, and has issue a son; ROBERT BARCLAY ALLARDICE, born at Hamilton in Upper Canada, 19th May, 1841, and baptized in the Presbyterian Church there, on the 6th June following.



KING ROBERT THE SECOND, the first Prince of the House of STEWART, succeeded to the Crown of Scotland on the 22nd of February, 1371. Previous to his accession he bore the title of EARL OF STRATHERN, which had been conferred upon him by his uncle King David the Second, about November, 1357¹; but as the grant of that Dignity is not recorded, neither its precise date nor limitation is known.

In early life King Robert had formed a connection with Elizabeth, daughter of Sir Adam Muir of Rowallan, by whom he had three sons: — namely, 1. JOHN, who was born in 1346, and who succeeded his father by the title of KING

REMARKS ON
the Marriages
of King
Robert II.

¹ King Robert the Second had no proper title or designation prior to the return of King David the Second in 1357, except that of "Stewart of Scotland." In the Parliament held on the 6th of November, 1357, he was so described by the King; but in a grant to the Abbey of Melros, dated in Council on the 29th of January following, he is styled (among the witnesses) "ROBERTUS SENESCALLUS SCOTIE, COMES DE STRATHERNE NEPOS NOSTER KARISSIMUS. His creation as Earl of Strathern must therefore have taken place in the intermediate period, and probably in the Parliament commencing on the 6th of November, 1357, which sat till the 10th of that month, if not much longer. (From information obligingly communicated by Thomas Thomson, Esq.)

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of King Robert
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ROBERT THE THIRD; 2. ROBERT, afterwards Earl of Fife and Monteith, Duke of Albany, and Regent of Scotland; and 3. ALEXANDER, Lord of Badenoch. In December, 1347, he obtained a Papal dispensation for his marriage with the said Elizabeth Muir, which, according to Fordun¹, took place in the year 1349; and she is supposed to have died before 1355.

King Robert married, secondly, about the year 1356, Euphemia, daughter of Hugh Earl of Ross, and widow of John Earl of Moray, for which alliance a Papal dispensation was obtained on the 2nd of May, 1355.² By her (who died in 1376), he had two sons, namely, DAVID, who was born between the years 1356 and 1360, and WALTER, Lord of Brechine, who was subsequently created Earl of Caithness and Earl of Atholl.

The facts³ connected with the marriages of King Robert the Second form so material a feature in the history of the Earldom of Strathern, that it is necessary to give a brief account of them.

It was asserted by Buchanan⁴ who followed,

¹ Vol. ii. lib. xi. cap. xiii.

² See p. 6.

³ The above statement is taken from the "Genealogical History of the Stewarts," by Andrew Stuart, Esq. 4to. 1798. Supplement, p. 405. *et seq.*

⁴ History of Scotland, folio, 1715, pp. 168. 192.

but exaggerated, the statements of Bower (the continuator of Fordun¹), and Boethius², that Robert the Third and the other children of King Robert the Second by Elizabeth Muir, were not only born before marriage, but that the marriage of their parents did not take place until after the death of Euphemia Ross; and consequently that great doubt existed respecting their legitimacy.

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This impression was so general in the reign of King Charles the First, that, as will afterwards be shown, the claim of the Earl of Monteith to the Earldom of Strathern in 1631, as heir of Prince David (eldest son of King Robert the Second by Euphemia Ross), excited great alarm, as involving a possible right to the Throne; and measures, as despotic as they were illegal, were adopted for the suppression of the proceedings.

Buchanan's statement was contradicted by Sir Lewis Stewart (a celebrated Scottish lawyer of the time of King Charles the First³), on the authority

¹ Fordun (vol. ii. lib. xi. cap. xiii.), states that Robert Stewart married Elizabeth Muir in 1349:—"Iste Robertus copulavit sibi de facto unam de filiabus Adæ de More, Militis, de qua genuit filios et filias extra matrimonium; quam postea, impetratâ dispensatione Sedis Apostolicæ in matrimonium desponsavit, canonicè in forma ecclesiæ, anno scilicet Domini 1349."

² Ed. Paris, p. 328.

³ The observations of Sir Lewis Stewart (who was engaged in the proceedings respecting the Earldom of Strathern in

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II.

of the Acts of Parliament and other proceedings for the settlement of the Crown in 1371, 1373, and 1374. But a more satisfactory refutation was a charter¹ granted by Robert Stewart in 1365, which proved that he was first married to Elizabeth Muir, and referred to a dispensation he had obtained from the Pope for that marriage. Many other works appeared on each side of the question ; but the most numerous of the controversialists supported the first marriage, and the legitimate descent of the Royal Family.²

1632) are cited by Sir George Mackenzie in his "Jus Regium." Mackenzie's Works, folio, vol. ii. p. 480.

¹ This Charter was first published by Lewis Hay, 4to. Paris, 1694 ; and reprinted in the Preface to Anderson's "Diplomata Scotiæ," pp. 38, 39. ; with a reply to Attwood's objections to its authenticity in his "Superiority and direct Dominion of the Imperial Crown of England over the Crown and Kingdom of Scotland," 8vo. 1704 ; which work was ordered by the Scottish Parliament to be burnt by the common hangman. The Charter was dated at Perth, on the 12th January, 1364-5, and had the seal of John Stewart Lord of Kyle, eldest son and heir of Robert Stewart, as well as his own seal, attached to it. Its genuineness was completely established by the discovery of the dispensation to which it refers.

² All these works are noticed in the "Genealogical History of the Stewarts." The question was also discussed in a very learned manner by John Gordon, a Scottish advocate, whose dissertation is prefixed to Goodall's edition of Fordun ; folio. Edinb. 1759.

The merit of having set the question at rest was, however, reserved for Mr. Andrew Stuart, who, in 1789, discovered in the Vatican the dispensation for King Robert's marriage with Elizabeth Muir, as well as the dispensation for his second marriage with Euphemia Ross. The first of these documents was issued by Pope Clement the Sixth on the 10th of the Kalends of December, in the sixth year of his Pontificate, *i. e.* 22nd of November, 1347. It is addressed to the Bishop of Glasgow, and states that a petition having been preferred to him on behalf of Sir Robert Stratgnf [Strathgrif] and the Lady Elizabeth Mox [Mure], to the effect, that they being ignorant that the said Elizabeth and the Lady Isabella Boucellier were related within the third and fourth, and the said Elizabeth and Robert within the fourth degree of consanguinity, the said Robert first carnally knew the said Isabella, and subsequently the said Elizabeth, by whom he had many children of both sexes; that this issue was favourably regarded by the Country; that it was hoped that their aid would be advantageous to David King of Scotland and to the realm; and that inasmuch as they were desirous of being joined in marriage, which desire could not be gratified without a dispensation, they prayed that such dispensation might be granted to them. The Pope acceding

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to the wishes of the Bishop of Glasgow, of the Kings of France and Scotland, and also of the parties themselves, empowered the said Bishop to enable them, notwithstanding the impediment of consanguinity, to contract marriage in the face of the Church, and declared their issue to be legitimate ; on condition that the said Robert should found and endow one or more chapels, according to the Bishop's discretion.

It is, therefore, evident, that the children of King Robert by Elizabeth Muir were born out of wedlock ; and that they were legitimated by the subsequent marriage of their parents.¹

The dispensation for King Robert's marriage with Euphemia Ross was granted by Pope Inno-

¹ Notwithstanding the fact that the parents of King Robert the Third were married before the birth of his father's children by Euphemia Ross, and that his issue by Elizabeth Muir were thus legitimated according to the Roman and Civil law, their legal right to the Crown was by no means clear, except under the Acts of Settlement, because there appears to be no reason to doubt that the *Regiam Majestatem* was at one period the law of Scotland ; being probably introduced by King Edward the First. In Robert the Second's time the law was in a state of transition ; the French connection subsequently did away with the old system of laws. In the second Book of the *Majesty*, chap. li. sect. ii., it is said :— " Albeit the bairne gottin and borne as said is, be the common Civill Lawe of the Romans, and be the Canon, and Pontificall Law, is lawfull ; nevertheless conforme to the Law of this Realme, he may no waies be suffered or heard to clame anie heretage as lawfull heire." (See Chalmers' Caledonia, vol. i. p. 732.)

cent the Sixth, on the 6th of the Nones of May, in the third year of his Pontificate, *i. e.* 2nd of May, 1355. It is also addressed to the Bishop of Glasgow, and states, that a petition had been preferred to him on behalf of Robert Stewart of Scotland, and the Lady Euphemia Countess of Moray, relict of the late John Earl of Moray, reciting that they, for the purpose of appeasing the wars, discords, and enmities which had arisen between the said Robert and William Earl of Ross, brother of the said Euphemia, and others her kindred, on account of the slaying of a certain nobleman, had agreed to contract a marriage; but, that as they were related in the fourth degree of consanguinity, and therefore in the third degree of affinity; and because the said Robert and John, while living, were within the third degree of consanguinity, they could not contract such marriage without a dispensation; and also that the fecundity of the kindred of the said Robert was so great that there was scarcely any woman, his equal, with whom he could contract marriage, who was not related to him in some degree of consanguinity or affinity, and praying for the necessary dispensation. The Pontiff, therefore, empowered the said Bishop to grant a dispensation for them to contract marriage; and declared the issue of such marriage to be legitimate.

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of King Robert
II.

DAVID EARL
OF STRATHERN.
1371.

One of the first acts of King Robert the Second, after his accession, was to bestow the EARLDOM OF STRATHERN upon his son Prince David.

In the instrument recording the proceedings, when the Peers and others swore fealty to that monarch at Scone on the 26th of March, 1371, Prince David, who was then about twelve or fourteen years old, is described as “DOMINUS DAVID SENESCALLUS FILIUS REGIS JUNIOR, COMES DE STRATHERYN¹ ;” and in a Royal charter of the Lands of Badenach to his half-brother Alexander, and the heirs of his body lawfully begotten, dated on the 30th of the same month, the reversion of those lands was settled on him, by the description of “David Stewart our son, Earl of Strathern,” and the heirs of his body lawfully issuing.²

The charter of Prince David’s creation as Earl of Strathern is not extant ; but on the 19th of June, 1371, he obtained a charter (which is the earliest existing charter relating to that Earldom) which proves that the territorial Earl-

¹ Records of the Parliament of Scotland, vol. i. part i. p. 119.; and printed also in “An Index drawn up about the year 1629, of many records of Charters granted by the different Sovereigns of Scotland between 1309 and 1413.” By William Robertson, Esq. 4to. Edinb. 1798. p. 13.

² Registrum Magni Sigilli Regum Scotorum, p. 84. (No. 286.) p. 121. (No. 8.).

dom of Strathern had been previously granted to him and *his heirs*. That charter is in the following words¹: —

DAVID EARL
OF STRATHERN.
1371.

“Robert by the Grace of God, King of the Scots: To all &c. Know Ye, that We have granted unto David Stewart, Knight, Earl of Strathern, our most dear Son, the Earldom of Strathern with the pertinents, to have and to hold unto him and *his heirs* in all things, and by all things, according to the form and tenor of the charter to him thereof made; with the addition underwritten, that he and his heirs may have and hold and possess for ever the same Earldom in free regality, with fees and forfeitures, and with all other liberties, commodities, easements, and just pertinents whatsoever which to a free regality pertain, or ought to pertain, according to the laws and customs of the realm, as freely, quietly, fully, entirely, and honourably, in all things, and by all things, as the late Malise Earl of Strathern, or any other Earl of the same, at any time more freely, quietly, fully, entirely, honourably, and justly held and possessed the same Earldom with appurtenances at any time. Wherefore, unto all and singular of the aforesaid Earldom and others whom it doth or may concern, We give in com-

¹ A copy of the original will be found in the APPENDIX, No. I.

DAVID EARL
OF STRATHERN.
1371.

mand for us and our heirs, by the tenor of these presents, that they do answer unto the said Earl and his heirs, in those things which unto a free regality pertain, like as unto them and every of them it pertaineth, and do cause it to be answered by others in times to come. In testimony whereof, &c. Witness &c. at Edinburgh, on the 19th day of the month of June in the first year of our reign.”¹

On the same day the King granted to him, (by the same designation) and the heirs of his body lawfully begotten, the Castle and Barony of Urchard in Inverness, with remainder to Sir Alexander Stewart, Knight, his half-brother, and the heirs of his body.²

Two other charters were obtained by the Earl of Strathern on the 3rd of July, 1371, confirmatory of, and enlarging the former grants of the Earldom *to him and his heirs*, in free regality, with fees and forfeitures, and with the pleas of the four points of the Crown, and of various other rights and prerogatives within his territorial Earldom of Strathern.³

On the 8th of May, 1372, King Robert

¹ Reg. Mag. Sig. p. 89. (No. 310.) p. 120. (No. 4.). See a copy of the original in APPENDIX, No. I.

² Ibid. p. 85. (No. 293.) p. 122. (No. 15.).

³ Ibid. p. 85. (No. 294.) p. 86. (No. 303.) p. 122. (No. 16.) These charters will be found in the APPENDIX, Nos. II. and III.

granted the Castle of Lochleven, together with certain lands for its support, to his consort Queen Euphemia, and to his and her son David Earl of Strathern, for their lives and the life of the survivor¹; and on the 19th of October, in that year, the Earl of Strathern obtained a fourth charter, confirming to him and *his heirs* the Earldom of Strathern, and granting them all lands, &c. which were anciently holden of the Earldom of Strathern, wheresoever within the realm, to be held by the service of rendering annually a pair of gilt spurs, if demanded, “*nomine albæ firmæ.*”²

DAVID EARL
OF STRATHERN.
1373.

On the 4th of April, 1373, the Earl of Strathern, being still under age³, was nominated in succession to the Crown of Scotland, which was then settled in the following manner: — First, upon John, eldest son of the King, Earl of Carrick and Steward of Scotland, and his heirs male; whom failing, upon Robert Earl of Fife and of Monteith, second son of the King by his first wife, and his heirs male; whom failing, upon Alexander Lord of Badenoch,

¹ Reg. Mag. Sig. p. 93. (No. 328.) p. 98. (No. 14.).

² Ibid. p. 87. (No. 304.) Vide APPENDIX, No. IV.

³ It would appear from that instrument that only John, Robert, and Alexander were then of full age, because they only of the King's sons swore to observe the settlement of the Crown, and they are therein described, as “*fili Regis seniores, et provecte etatis, Domini scilicet Johannes, Robertus, et Alexander,*” &c.

DAVID EARL
OF STRATHERN.
1375.

third son of the King by his said wife, and his heirs male; whom failing, upon David Earl of Strathern, son of the King by his second wife, and his heirs male; whom failing, upon Walter, son of the King, and brother-german of the said David, and his heirs male.¹

In April, 1373, the King confirmed a grant, made by "his son David Earl of Strathern," of certain lands in that Earldom, to Sir John Maxwell and Isabella his wife, the King's niece²; and in May, in the same year, the Earl obtained a safe-conduct from King Edward the Third for one year to come into England, with two Knights and thirty other persons in his retinue.³

On the 21st of March, 1375, the King of Scotland granted to the Earl of Strathern the Castle of Brathwell, with its entire territory, and all other lands, as well in the Earldom of Caithness as elsewhere in Scotland, which had belonged to Alexander de Arde in right of Maud de Strathern his mother, but which he had surrendered and resigned to the King at Scone, to be held by the Earl of Strathern and *his heirs* of the King and his heirs⁴; and by another charter, dated on the same day, all the interest which

¹ Robertson's Index, p. 14.

² Reg. Mag. Sig. p. 136. (No. 53.).

³ Rotuli Scotie, folio, vol. i. p. 958.

⁴ Reg. Mag. Sig. p. 137. (No. 59.) p. 159. (No. 27.).

Alexander de Arde had possessed in the Earldom of Strathern and in all parts of the same was granted to the said Earl and *his heirs*.¹

DAVID EARL
OF STRATHERN.
1375.

Before November, 1375, the King had conferred on him the EARLDOM OF CAITHNESS; and on the 24th of that month an Indenture was executed at Perth between Euphemia Queen of Scotland, "David Earl Palatine of Strathern and Earl of Caithness" of the one part, and Alexander Murray of Drumsergorth of the other part, by which it was agreed that the said Alexander should marry the Lady Janet de Monymuske, sister of the said Queen, who, with the Earl, promised to afford him, at their cost, the assistance of lawyers and advocates in recovering his inheritance; that the Queen should maintain her said sister for one or two years; and that Walter Murray, brother of the said Alexander, should, if he pleased, marry the elder daughter of the said Lady Janet.²

EARLDOM OF
CAITHNESS.

In February, 1377, the Earl of Strathern with the Earl of March, and four other Scottish Knights, obtained letters of safe-conduct to come

¹ Reg. Mag. Sig. p. 138. (No. 60.) p. 159. (No. 28.).

² Anderson's *Diplomata Scotiæ*, p. lviii. To this instrument the Arms of the Queen, viz. three lions rampant, and the Arms of the Earl of Strathern, viz. those of Scotland, with a label of three points (the shield borne on the breast of an Eagle), were affixed. An engraving of the Earl's seal will be found in the APPENDIX.



DAVID EARL
OF STRATHERN
AND CAITHNESS.
1380—1389.

into England¹; and in a Royal charter, dated on the 28th of December in that year, ratifying a grant made by him of lands in the Earldom of Caithness, he is styled “Our dearest son David Stewart Earl Palatine of Strathern and of Caithness²; and he was again described by those titles in a similar charter of confirmation on the 14th of February, 1380.³

As the charter by which the Earldom of Caithness was given to the Earl of Strathern is not preserved, neither its date nor its terms can be exactly ascertained. It is, however, evident that he held that dignity, like his Earldom of Strathern, to him and *his heirs*, or the *heirs of his body*, because, as will afterwards appear, the Earldom of Caithness was inherited by his daughter and heiress. In February, 1382, the Earl received letters of safe-conduct from King Richard the Second to come into England with forty persons in his retinue.⁴

This is the last notice that has been discovered of David Earl of Strathern; and he is presumed to have died before 1389.⁵ It is a remarkable fact that, though a legitimate son of the King of

¹ Rot. Scot. vol. i. p. 983.

² Reg. Mag. Sig. p. 150. (No. 111.):—“Carissim⁹ fili⁹ n^r David senesc^r comes palatin⁹ de Strathne et de Catania.”

³ Ibid. p. 142. (No. 79.).

⁴ Fœdera, vol. vii. p. 346. Rot. Scot. vol. ii. p. 42.

⁵ Vide note, p. 15. whence it appears that his daughter and heiress was styled *Countess Palatine of Strathern* in 1389.

Scotland, still, so lately as the fourteenth century, neither the place nor period of his birth, the name of his wife, the time of his marriage, nor even the date of his death can be ascertained.¹

DAVID EARL
OF STRATHERN
AND CAITHNESS.
1380—1389.

David Earl of Strathern was, however, married, and left issue, an only child,

EUPHEMIA STEWART², who succeeded her father in the Earldoms of Strathern and Caithness, and became COUNTESS PALATINE OF STRATHERN AND CAITHNESS. The time both of her birth and marriage is unknown³; but it would

EUPHEMIA
COUNTESS OF
STRATHERN.

¹ This appears to be the more extraordinary since the names of the wives, and dates of the deaths of all the *other* sons of King Robert the Second, are known; and it may therefore be supposed, that many documents relating to David Earl of Strathern were destroyed in 1633, when the service of his heir, William Earl of Monteith, was reduced. The Earl of Traquair, writing to the Earl of Morton on the 16th of March in that year, says, "It has been madness to have attempted such things, but, seeing they have been once moved, I wish some such course may be taken as may secure our Master's interest, whatever it be. Reduction upon the summons libelled, nor yet certification upon not-production in the improbation is not sufficient, except some way be found for *cancelling* and *destroying of all writs* that may concern this business." (Vide APPENDIX, No. XI.)

² Her baptismal name was evidently derived from her grandmother, *Euphemia* Queen of Scotland, second wife of King Robert the Second.

³ Nesbit states, that he had "seen the *Seal of Euphemia Countess of Strathern* appended to a *Charter of the date of 1389*, wherein she is designed "EUPHAM. SENESCAL. COMITISSA PALATINA DE STRATHERN," on which Seal was the picture of a woman at length, holding by each hand a shield;

PATRICK EARL
OF STRATHERN.

appear that she was born before 1375. In March 1406 she was the wife of SIR PATRICK GRAHAM, to whom she brought the Earldom of Strathern, and who bore the title of "Earl of Strathern" in her right. Before her marriage she had resigned her Earldom of Caithness; and King Robert the Third granted to Walter Stewart Lord of Brechine, "the Earldom of Caithness, and regality thereof, by resignation of the Countess Palatine, called Eupham Stewart Countess Palatine of Strathern; blench, for a reid haulk."¹

PATRICK EARL
OF STRATHERN.
1406—1412.

SIR PATRICK GRAHAM, EARL OF STRATHERN, *jure uxoris*, by the description of "Patrick de Graham Earl of Strathern," or of "Patrick Earl of Strathern," was witness to various Royal charters between the 12th of March, 1406, and the 22nd of July, 1410.²

On the 6th of December, 1406, Patrick Earl of Strathern, with the consent of Euphemia his wife, granted an annual rent of five pounds Scots from their two towns of Kincall in Perthshire, to Euphemia, daughter of Sir Alexander de

that on the right was charged with two chevrons for Strathern; upon the other, by the left, was a fess cheque for Stewart." (System of Heraldry, vol. ii. p. 31.)

¹ Robertson's Index, p. 149. The Roll upon which this charter was recorded has long been missing.

² Reg. Mag. Sig. p. 223. (No. 10.) p. 225. (Nos. 11, 12.) p. 236. (No. 35.) p. 237. (No. 37.) p. 241. (No. 47.) p. 246. (No. 6.).

Lindsay of Glenesk, which was confirmed by the Duke of Albany, as Regent of Scotland, on the 15th of December, 1412.”¹

PATRICK EARL
OF STRATHERN.
1412—1413.

In July, 1408, the Earl of Strathern, with several other Scottish noblemen, received letters of safe-conduct from King Henry the Fourth² to come into England; and he obtained similar letters on the 18th of May, 1412, when he was one of the hostages for Murdac Master of Fife, son of the Duke of Albany the Regent³, which is the last notice that has been found of him in the public records.

The Earl of Strathern was treacherously slain at Crieff by his brother-in-law, Sir John Drummond of Concraig, on the 10th of August, 1413.⁴ By the Countess Euphemia he left issue two daughters, and an only son,

MALISE GRAHAM⁵, who succeeded to the Earldom of Strathern. The earliest notice that

MALISE EARL
OF STRATHERN.
1413.

¹ Reg. Mag. Sig. p. 250. (No. 5.).

² Fœdera, vol. viii. p. 544.

³ Rot. Scot. vol. ii. p. 200.

⁴ Fordun, vol. ii. p. 447., whose words are : — “ Joh. Dromond de Concrag, Miles, interfecit Dominum suum D. Patricium de Graham Comitem de Stratherne insidiose.” Sir John Drummond of Concraig had married Matilda, half-sister of Patrick, Earl of Strathern. Wood’s Douglas’ Peerage, vol. ii. p. 236.

⁵ The baptismal name of *Malise* was evidently derived from the former Earls of Strathern; viz. *Malise*, who bore that Title in the 12th century, and his descendants, *Malise* the fifth, *Malise* the sixth, and *Malise* the seventh and last Earl of Strathern of that House.

MALISE EARL
OF STRATHERN.
1413.

occurs of him is, that by a treaty dated on the 4th of December, 1423, he was nominated one of the hostages for the release of King James the First¹; and on the 14th of that month he had a safe-conduct from King Henry the Sixth to meet the Scottish Monarch at Durham.²

In the first Parliament of the reign of King James the First, held at Perth on the 16th of May 1424, a Statute was passed for inquiring “what lands, possessions, or annual rents pertains to the King, or has pertained in his ancestors’ times of good memory, David, Robert, and Robert, his progenitors, and in whose hands they now be;” and power was given to the King to compel all his tenants to show their charters and evidences.³

Notwithstanding the repeated grants and confirmations of the Earldom of Strathern by King Robert the Second to his son Prince David and *his heirs*⁴, the Crown pretended that it was a *male fief*; and, under the above mentioned Statute, Malise Graham was divested of his inheritance; the iniquity of the proceeding being

¹ Feederæ, vol. x. pp. 307, 308.

² Wood’s Douglas’ Peerage of Scotland, vol. ii. p. 560.

³ Acts of Parliament of Scotland, vol. ii. p. 4. (No. 9.) Lord Hailes observes, that “when the Scottish nobles concurred in enacting this law, they little imagined that they were furnishing a handle for that axe which might bring the loftiest of them to the ground.” (Additional Sutherland Case, chap. v. p. 56.)

⁴ Vide p. 14. and APPENDIX, Nos. I. II. III. IV.

increased by its having taken place while he was in his minority, and an hostage in England.

MALISE EARL
OF MONTEITH.
1424—1427.

Being thus deprived of the Earldom which he had inherited, through his mother, from his grandfather, David Earl of Strathern, King James the First conferred upon him the personal EARLDOM OF MONTEITH¹, and afterwards erected various lands into a territorial Earldom of Monteith.

Creation of the
Earldom of
Monteith.

The exact date of these transactions does not appear; but it is most probable that they occurred within a year after the Statute of May 1424, before mentioned, was passed; and as it is very unlikely that Malise Graham ever lost his *personal* dignity of Earl, the presumption is, that he was not divested of the Earldom of Strathern until after the execution of the Duke of Albany, in May, 1425; and that the *personal* Earldom of Monteith, which was then forfeited by that nobleman, was immediately conferred upon him, though the new *territorial* Earldom (which was formed of *part only* of the lands of which it had previously consisted) was not erected in his favour until September 1427.²

¹ As the EARLDOM OF MONTEITH *had descended through a series of female heirs*, and is said by Lord Hailes (Additional Sutherland Case, chap. v. p. 13.) to afford "*an opposite example of female succession in lands and dignities*," a brief account of its previous history will be found in the APPENDIX, No. V.

² No instrument to which Earl Malise was a party, between May, 1424, and September, 1427, is known to exist.

MALISE EARL
OF MONTEITH.
1427—1437.

On the 22nd of July 1427, the King's uncle, Walter Earl of Atholl, for whom the Countess Euphemia had resigned (perhaps compulsorily) the Earldom of Caithness, was created Earl of Strathern for life.¹

The alienation of the Earldom of Strathern from the House of Graham led to one of the most horrible events in Scottish history.² Sir Robert Graham, brother of Patrick, and uncle and tutor of Malise Earl of Strathern, perhaps the most remarkable man of his age, who is described by a contemporary writer as “a grete gentilman, and an Erles sune, a man of grete wit and eloquence, wounder suttilye willyd and expert in the lawe³,” had long been in rebellion; and this new act of tyranny, of which his own nephew and ward was the victim, added greatly to his discontent. He denounced his Sovereign's proceedings in such audacious terms in Parliament, that he was arrested, imprisoned, and his estates confiscated; but contriving to escape, he formed a conspiracy with the Earl of Atholl, and his son Sir Robert Stewart, which ended in the murder of the King in April 1437, and caused the execution of Atholl, Graham, and their accomplices, with the most revolting cruelties.³

¹ See APPENDIX, No. XIII. p. lxxxvii.

² Ibid. No. V.

³ Appendix to Pinkerton's History of Scotland, vol. i. p. 462. *et seq.* Sir Robert Graham was, however, the *brother*, and not the *son*, of an Earl.

On the execution of the Earl of Atholl and Strathern, the *personal* Earldom of Strathern reverted to the Crown. In August 1455¹, Parliament passed an Act, which, after reciting that “the poverty of the Crown is oftentimes the cause of the poverty of the Realm, and many other inconveniences,” proceeded to “annex certain lordships and castles perpetually to the Crown.” Among numerous other territories which reverted to the Crown under that Act, were, “the Earldom of Strathern, with the pertinentis.”²

MALISE EARL
OF MONTEITH.
1427.

It is unquestionable, as well from the express object of this Statute, as from every part of it, that it related only to *lands*, or to the rights incidental to *lands*; and, consequently, that it was only the *territorial* Earldom of Strathern which was thus annexed to the Crown.

As in the instances of the Earldoms of Strathern, Caithness, Buchan, and others, no Charter of the creation of Malise Graham, as Earl of Monteith, is extant; but, although he seems to have obtained that Dignity as early as the year 1425, it is probable that it was not confirmed to him by Charter until the 6th of September 1427, on which day he also received

¹ Only two proceedings relating to the *territorial* Earldom of Strathern, between 1425 and 1455, are on record. — Acts of Parliament of Scotland, vol. ii. pp. 59. 61.

² Acts of Parliament of Scotland, vol. ii. p. 42.

MALISE EARL
OF MONTEITH.
1427.

a Charter erecting the lands of Craynis, and other lands, into the *territorial* Earldom of Monteith.

Under these circumstances, neither the exact date nor the limitations of the Dignity can be stated; but there is the strongest presumptive evidence that the *personal* Earldom of Monteith, like that of Strathern, which had been unjustly wrested from him, and like that of Caithness, which his mother had inherited and surrendered, stood destined to *heirs general*.

Malise Graham's claim to an Earldom was as an *heir general*, and not as an *heir male*, his father having been Earl of Strathern only *jure uxoris*. He was consequently divested of that Dignity under the pretence of its being a *male fief*; and when the Earldom of Monteith was given him, by way of compensation, it would have been inconsistent with that proceeding, and have placed the injustice of the Crown, in depriving him of the Earldom of Strathern, in too strong a light, if the new Dignity had also previously been, or if it were then made, a *male fief*. It is very doubtful from the history of the Earldom of Strathern, whether it was ever enjoyed by a female, before it fell to the Crown by forfeiture in the reign of King Robert the First; but the Earldom of Monteith had *always been a female fief* (if the expression may be allowed), *the dignity having been inherited and enjoyed by no less than four females*; and Murdach Duke

of Albany, the very last Earl of Monteith, had inherited it from *his mother*.¹

MALISE EARL
OF MONTEITH.
1427.

The obvious inference from these facts is, that being an *heir general*, Malise Graham was deprived of an Earldom which had been previously held by *male heirs*; and that he obtained, in exchange, an Earldom which, having often descended to *heirs general*, and being destined to him and his *heirs general*, was strictly consistent with his status as an *heir general*.

By the Charter of the *territorial* Earldom of Monteith², King James the First granted to his dear cousin Malise, Earl of Monteith, all and singular the lands following, namely, the lands of Craynis, &c., in the county of Perth, which he erected into the free Earldom of Monteith, (reserving to the Crown the other lands which of old were part of the said Earldom), which lands, the Charter proceeds, “We ordain and of new erect into the free Earldom of Monteith, to be held by the said Malise and his heirs male of his body lawfully procreated (whom failing, to return freely to us and our successors,) of us and our heirs as the free Earldom of Monteith.”

It is perfectly clear that this Charter was not the instrument by which the *personal Dignity* of Earl of Monteith was created³:—

¹ Vide note, p. 30., and APPENDIX, No. V.

² For a copy of the original, see the APPENDIX, No. VII.

³ This fact was admitted by the Lord Advocate, in his speech on the Claim to the Earldom of Airth, in 1839.

MALISE EARL
OF MONTEITH.
1427—1453.

First, because the grantee is described therein as “*Earl of Monteith*,” so that he must have been *previously possessed* of that Title; and

Secondly, because *it does not contain one word relating to Dignities or Honours*, but refers *exclusively* and entirely to *Lands*, or to *rights* and *privileges incidental to Lands*.

On the 9th of November, 1427, the Earl of Monteith became one of the hostages for the payment of the ransom of James King of Scotland in the room of Sir Robert Erskine¹; and he is said² to have remained in England until the 17th of June 1453, when his son and heir, Alexander Graham, became an hostage in his place, the Earl of Douglas and Lord Hamilton being sureties for the Earl of Monteith’s surrender, in the event of his son’s death or escape.³

On the 8th of February, 1466, Malise Earl of Monteith, obtained a Charter erecting the town or village of Port into a Burgh of Barony, in favour of himself and his successors, and the inhabitants thereof.⁴

In March 1479, the Lords of the Council decreed that he should pay to William Stewart of Baldorane, “300^c of vittale for the half the teind

¹ Fædera, vol. x. p. 381. Proceedings of the Privy Council of England, vol. iii. p. 357.

² Wood’s Douglas’ Peerage, vol. ii. p. 227.

³ Fædera, vol. xi. p. 339.

⁴ Reg. Mag. Sig.

of the Kirk of Abirfule¹;" and on the 8th December 1485, he granted the Lake of Lochton to his son Walter Graham and the heirs male of his body. Malise Earl of Monteith was present in Parliament on the 9th of June 1455, and again in October 1464, in 1467, 1469, 1471, 1476, 1477, 1478, and on the 13th of April 1481²; and died some time before the 17th of May, 1491, when Marion Countess of Monteith, John of Drummond her spouse, and John Lord Drummond, appeared as pursuers in a cause against Walter Buchanan of that ilk, respecting the Lands of Samchalze, given to her by the late Malise Earl of Monteith; and Alexander, then Earl of Monteith, protested that the decision should not injure him in his inheritance.³

MALISE EARL
OF MONTEITH.
1455—1491.

Though Malise Earl of Monteith is said by some authorities to have married, first, Ann Vere, daughter of Henry Earl of Oxford⁴, and by others, Jane Rochford, all that is positively known of his wife or wives is in the record above mentioned, whence it appears that his widow

¹ Acts of the Lords of Council in Civil Causes, 29th March 1479.

² Acts of Parliament of Scotland, vol. ii. pp. 77. 84. 88, 89. 93. 98. 101. 113. 120. 134. Records of Parliament of Scotland, vol. i. part i. p. 232.

³ Acts of the Lords Auditors of Causes and Complaints, 17th May 1491.

⁴ Wood's Douglas' Peerage, vol. ii. p. 228. There was never, however, an Earl of Oxford called *Henry*.

was called Marion, and that she had remarried John Drummond before May 1491. He had issue three sons, Alexander, John, and Walter.

ALEXANDER
MASTER OF
MONTEITH.
1453.

Of ALEXANDER GRAHAM, MASTER OF MONTEITH, his son and heir, no other facts are known than that he became an hostage in England, instead of his father, in June 1453; that he died in his father's lifetime; and that he is said to have left issue, by Matilda, daughter of Thomas Lord Erskine, a son,¹

ALEXANDER
SECOND EARL
OF MONTEITH.
1493—1540.

ALEXANDER GRAHAM, SECOND EARL OF MONTEITH, who was described as "Alexander Grahame, are to umquhile Malise Earle of Menteth," on the 24th of June and 5th of July 1492²; and was served heir to his grandfather on the 6th of May 1493.¹ He was present in the King's Council, being described as "Alexander Earl of Monteith," on the 25th of August 1495³; and

¹ Carta penes D. Montrose, cited in Wood's Douglas' Peerage, vol. ii. p. 228. The proceedings before the Council in June and July 1492, which shew that *John Graham*, by the description of "*son and heir*" of Malise Earl of Monteith, had obtained a Royal Charter, on the 6th of April 1469, of the lands of Kilbride, on his father's resignation; and that Alexander Graham, as heir of the late Earl Malise, had a direct interest in those lands, render it more likely that *Alexander Graham*, the *eldest* son of Earl Malise, *died without issue*; that *John Graham*, the *second* son, also died in his father's lifetime, and that *Alexander*, the *second Earl*, was the *son of the said John Graham*.

² Acts of Lords of the Council in Civil Causes, 24th June and 5th July 1492.

³ Ibid. 25th Aug. 1495.

was present in Parliament on the 10th of July 1525.¹

ALEXANDER
SECOND EARL
OF MONTEITH.
1493—1540.

On the 2nd of February 1531, King James the Fifth granted to his cousin, Alexander Earl of Monteith, the third part of the lands of Kilbride, to hold to him and his heirs.² By Margaret, daughter of Walter Buchanan of Buchanan, he had two sons, William, and Walter Graham, who is supposed to have been the ancestor of the Grahams of Gartur. Dying between 1531 and 1540³, he was succeeded by his eldest son,

WILLIAM GRAHAM, THIRD EARL OF MONTEITH, who was present in Parliament on the 10th of December, 1540³, and by Margaret, daughter of John Mowbray of Barnboulgal, had several children. The precise date of his death is uncertain; but he was succeeded by his eldest son,

WILLIAM
THIRD EARL
OF MONTEITH.
1540.

JOHN GRAHAM, FOURTH EARL OF MONTEITH,

¹ Acts of the Parliament of Scotland, vol. ii. p. 292.

² Reg. Mag. Sig.

³ Acts of Parliament of Scotland, vol. ii. pp. 355. 404, 405. In Wood's Douglas' Peerage, vol. ii. p. 228., it is said, that William, third Earl of Monteith, died in 1537, but he was certainly present in Parliament on the 10th of December, 1540. The "Earl of Monteith" was also present in Parliament on the 14th of March, 1541, and on the 4th and 15th of December, 1543, but as his christian name is not mentioned, it is doubtful whether it was *William*, the third, or his son *John*, the fourth Earl. — Acts of Parliament, vol. ii. pp. 368. 427. 443.; and Records of the Parliament of Scotland, vol. i. part i. pp. 660. 674.

JOHN, FOURTH
EARL OF
MONTEITH.
1545—1550.

who was present in Parliament on the 26th of June, and the 1st and 2nd of October, 1545, on the 12th of April, 1554, 29th of November, 1558, and in August, 1560.¹ He was taken prisoner at the rout of the Solway in November, 1542; ransomed for 200 marks on the 1st of July, 1543²; and accompanied Queen Mary to France in August, 1550.³ The date of his decease is not known.⁴ By Marian, eldest daughter of George Lord Seton (who afterwards married John tenth Earl of Sutherland), he had, besides three other children, his son and heir,

WILLIAM,
FIFTH EARL
OF MONTEITH.

WILLIAM GRAHAM, FIFTH EARL OF MONTEITH, who was present in Parliament in July and December, 1567; August 1568; and in March 1574; and on the 23rd of March 1578⁵, it was determined in Parliament that he should be one of the Peers who were "to be upon the Council when they are present, or when the King sent for them."⁶ He is said to have died in

¹ Acts of Parliament, vol. ii. pp. 525. 595. 603. 606. Records of Parliament, vol. i. part i. pp. 683. 729.

² Fœdera, vol. xv. p. 797.

³ "Diurnal of remarkable Events in Scotland since the Death of King James the Fourth till the Year 1575." Printed by the Bannatyne Club. 4to. 1833. p. 50.

⁴ Wood's Douglas' Peerage, vol. ii. p. 228. states, that he was killed in a scuffle with the tutor of Appin, in October, 1547; but *John* Earl of Monteith was present in Parliament in August, 1560. Acts of Parliament, vol. ii. p. 606.

⁵ Acts of Parliament, vol. iii. pp. 4. 12. 47. 48. 56. 84. vol. iii. p. 119.

⁶ Ibid.

1579, and was certainly dead in October, 1587.¹ By Margaret, eldest daughter of Sir James Douglas of Drumlanrig (widow of Edward Lord Crichton of Sanquhar), whom he married about May 1571, before he became of age², he left a son,

JOHN GRAHAM, SIXTH EARL OF MONTEITH, JOHN SIXTH
EARL OF
MONTEITH.
1587—1593. who was served heir to his father on the 21st of October, 1587³, being then a minor. He died in December, 1598; and by Mary, third daughter of Sir Colin Campbell of Glenorchy, had, besides other issue, his eldest son,

WILLIAM GRAHAM, SEVENTH EARL OF MONTEITH, WILLIAM
SEVENTH EARL
OF MONTEITH.
1589—1629. who was born in 1589, and on the 7th of August, 1610, in which year he became of age, he was served heir to his father in the Earldom of Monteith.⁴ Through the recommendation of Sir William Alexander, Secretary of State in Scotland, he was made a member of the Privy Council⁵, and his ancient descent and superior talents having, through the influence of the Duke of Buckingham, attracted the notice of King Charles the First, he received various proofs of his Majesty's confidence and favour. In August, 1628, he was appointed Lord Justice General of

¹ Inq. Ret. in Pub. Arch. cited in Wood's Douglas' Peerage, vol. ii. p. 228.

² Reg. Mag. Sig. vol. xxxiii. fol. 44.

³ Inq. Ret. in Pub. Arch. "B. fol. 115."

⁴ Reg. Return. lib. iv. fol. 447.

⁵ Sir John Scot's "True Relation," APPENDIX, No. IX. p. xxi.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1628-9.

Scotland¹; in November following he was made an Extraordinary Lord of Session¹; and on the 21st of February, 1628, became Lord President of the Privy Council.¹ The ambition of the Earl of Monteith was, however, rather stimulated than satisfied by these honours; and in an evil hour for his own happiness and interests, he determined to assert his hereditary right to the EARLDOM OF STRATHERN, as *heir of line* of Prince David, son of King Robert the Second.

In July 1629, when only three years remained unexpired of the term allowed by the "Act of Prescriptions²" for claims to estates, the Earl of Monteith caused the Register of the Great Seal and his own Charter chest to be examined, for any grants of lands and lordships to his ancestors. Among others, the Charters of the Earldom of Strathern, granted by King Robert the Second, on the 19th of June and 3rd of July 1371, to David Earl of Strathern and his heirs, already noticed³, were discovered.

The Earl submitted these Charters, with his other evidences, to Sir Thomas Hope, then King's Advocate, desiring his advice and judgment respecting them. Sir Thomas Hope gave his opinion that the lands mentioned in those

¹ Wood's Douglas' Peerage, vol. i. p. 36.

² Act of 1617, c. 12. "Anent prescription of heritable rights."

³ Vide pp. 15, 16., and APPENDIX, Nos. I. II. III.

instruments were of two kinds; the one being lands appertaining to His Majesty and annexed to the Crown, and the other being lands unannexed and appertaining to subjects; that the Earl had good grounds to proceed in an action for the lands belonging to subjects; but that with respect to the lands annexed to the Crown, and especially those of the Earldom of Strathern, he was persuaded that his Lordship would do nothing therein without first acquainting His Majesty.

WILLIAM
OF MONTEITH.
1629.

The Earl expressed himself satisfied with Sir Thomas Hope's opinion; declared that he would "shun all contestation" with His Majesty respecting the Earldom of Strathern so far as it was annexed property; and desired him to acquaint the King with his claim, and "to draw up such a Renunciation thereof in favour of His Majesty as he would be answerable, for His Majesty's security."¹

Sir Thomas Hope immediately prepared, and the Earl signed, a Renunciation of such of the lands of the Earldom as were then in the hands of the Crown; and Hope transmitted it to the King, with a letter, dated on the 14th of August 1629, acquainting His Majesty that he had seen the two Charters of the Earldom of Strathern granted to Earl David and his *heirs*

¹ Sir Thomas Hope's "Trew Estait of the Business of Stratherne." See the APPENDIX, No. VIII. p. xx.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1629.

whatsomever, without restriction to the heirs male of his body, though it was ever the commonly received opinion that the said Earldom, being *feudum masculinum*, had returned to the Crown by the decease of Earl David without heirs male of his body; that under those Charters to the *heirs whatsomever* the Earl of Monteith claimed a right to the said Earldom, as being lineally descended from Euphemia Countess of Strathern, the only daughter of Earl David, who married Patrick Graham Earl of Strathern, predecessor of the said Earl, and by appearance might carry ground by law, if it were not shewn where the said Earldom was renounced by his predecessors, or exchanged by them.¹ Sir Thomas Hope then proceeded to acquaint His Majesty with the Earl's voluntary offer to renounce his right to the Crown lands, and that he had consequently drawn up the renunciation he indorsed, which was subscribed by the Earl; adding, that it was "a business of that importance that it were not fit to be neglected, specially seeing the said Earl had offered to His Majesty a voluntary renunciation."¹

The King, on being informed of the facts of the case, and of the Advocate's opinion on the subject, authorized a Warrant to be issued to Sir Thomas Hope, dated on the 29th of September, 1629, stating that His Majesty had conferred with the

¹ Sir Thomas Hope's "Trew Estait of the Business of Stratherne." Vide APPENDIX, No. VIII. p. xxi.

Earl of Monteith respecting his right and title to the Earldom of Strathern, who had willingly submitted himself to be disposed of as the King pleased, touching all the lands belonging thereto which were the property of the Crown; that His Majesty desired to be secured of the same, leaving him to prosecute his right against all others for all other lands which he could justly claim by virtue thereof; and Sir Thomas Hope was commanded to “draw up a surrender of all lands of our property comprehended within the said Earl of Strathern’s evidences, to be signed by him or any other, or any such right as ye shall think requisite for our surety to be registered for that effect. And as, after due consideration, we intend to give him reasonable satisfaction for the same, so we are willing that ye assist him in his other actions so far as ye can lawfully do.”¹

WILLIAM
SEVENTH EARL
OF MONTEITH.
1629.

On the same day the King wrote to the Earl, informing him of the contents of the warrant to the Advocate, and stating, that as he had freely submitted to His Majesty’s pleasure respecting such lands as were the property of the Crown, “so we intend, after due

¹ Sir John Scot of Scotstarvet’s “True Relation of William Earl of Monteith’s Affairs concerning the Earldom and Title of Stratherne,” APPENDIX, No. IX. p. xxxix.; and Sir Thomas Hope’s “Trew Estait,” &c. Ibid. No. VIII. pp. xxi. xxii.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1629.

consideration, to give you a reasonable satisfaction for the same.”¹

On the 9th of November, 1629, a Letter was written to the Clerk Register, stating that the Earl of Monteith was, “for some important considerations known to us, to search for some writs among our evidences and rolls” in his charge, and commanding him “to make patent to him what records, evidences, or writs whatsoever,” in his custody, and “to give him such thereof as shall be found by our Advocate to concern the purpose for which we have granted unto him this licence.”² On the same day, the King wrote the following Letter to the Advocate (Sir Thomas Hope):—

“Whereas We have both heard and found by experience your affection for furthering of our service since your entry thereto, since which time the state of our affairs has required in your charge great pains and trouble; but understanding the state of our coffers to be such at this time that no money can be conveniently paid by us, yet we intend to give unto you two thousand pounds sterling so soon as we can conveniently do the same, whereof we have thought good hereby to give you notice. So expecting, from time to time, ye will con-

¹ Sir John Scot's “True Relation,” APPENDIX, No. IX. p. xxxix.

² Ibid. p. xl.

tinue, as ye have begun, to advance our service in your hands, we bid you farewell. 9th November, 1629.”¹

WILLIAM
SEVENTH EARL
OF MONTEITH.
1630.

The King's Letter to the Advocate, of the 29th of September, was not delivered to him until the 24th of December, nearly two months after its date²; when, considering that the Renunciation which the Earl had executed on the 14th of August, and which had been sent to the King, had become void in law, because it was not registered in due time according to the Act of Parliament, Sir Thomas Hope caused a new Renunciation of the Earldom of Strathern to be prepared, which was subscribed by the Earl of Monteith on the 22nd of January, 1630.³

This Renunciation, after reciting the grant of the Earldom of Strathern by King Robert the Second, in 1371, to his son David and his heirs, by the Charters before noticed, proceeded: “And forasmuch as I the said Earl of Monteith am undoubted heir of blood and successor to the said late David Earl of Strathern, being descended lineally from Patrick Graham and Euphemia Stewart, daughter to the said David, and thereby having good and undoubted right

¹ Sir John Scot's “True Relation,” APPENDIX, No. IX. p. xl.

² Sir Thomas Hope's “Trew Estait,” APPENDIX, No. VIII. p. xxii.

³ Ibid.

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OF MONTEITH.
1630.

to claim the said Earldom, yet not the less considering that the said Earldom has been enjoyed by His Majesty and his predecessors as a part of the annexed property continually since the decease of King James the Second," &c. and "calling to mind the extraordinary favours which His Majesty had bestowed upon" him, and that it hath pleased His Majesty to bestow on him "such satisfaction therefore as His Majesty in his gracious wisdom thought expedient," he in "all humble affection and respect to his sacred Sovereign had renounced all right and interest whatsomever which he or his heirs have or may pretend to the said Earldom in special favours of his sacred and gracious Sovereign, his heirs and successors, to remain with them and the Crown for ever." From this Renunciation, the Earl specially excepted the lands and barony of Kilbride lying within the said Earldom. He bound himself and his heirs to make a surrender of the said Earldom in favour of the King and his successors in the necessary forms; among others, that he would, if necessary, cause himself and his heirs "to be served, retoured, and seised in the said lands as heir to the said late Earl David¹;" which clause, Sir Thomas Hope says¹, was inserted by him, "of certain knowledge that

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. pp. xlii.—xliv.; and see a literal copy of the Renunciation in the APPENDIX, No. X.

without it the Renunciation would have been void in law.”¹

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SEVENTH EARL
OF MONTEITH.
1630.

It was, however, specially provided, that the Renunciation should not prejudice the Earl or his heirs of their right and dignity of blood, as heirs of line of David Earl of Strathern, in these words: — “Providing these presents, nor no clause thereof, prejudge me and my forsaid of our right and dignity of blood, pertaining to us as heir of line to the said umquhile David Earl of Strathern.”²

The Renunciation having been “presented to the Register in due time, was afterwards exhibited by His Majesty’s Advocate in the presence of the Lords of the Privy Council, and delivered to the Clerk of Register to be kept for His Majesty’s use, whereupon Act was taken in the presence of the Lords.”³

On the 13th of May, 1630, the Earl of Monteith obtained a Charter from the Crown confirming two Charters, one of the Barony of Urchart in the County of Inverness, the other of the Camp of Brathwell in the County of Caithness, which had been granted by King Robert the Second to his son David Earl of Strathern and “his heirs and assigns, to whom

¹ “Trew Estait,” APPENDIX, No. VIII. p. xxii.

² APPENDIX, No. X. p. lvii.

³ Sir Thomas Hope’s “Trew Estait,” APPENDIX, No. VIII. p. xxii.

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SEVENTH EARL
OF MONTEITH.
1630.

our Cousin and Councillor William Earl of Monteith is undoubted heir of line and in blood¹," with a *novo damus* in favour of the Earl and his heirs male and assigns whomsoever.²

For the further security of the Crown, Sir Thomas Hope proposed that the Earl of Monteith should give validity to the Renunciation by having himself served heir general of David Earl of Strathern³, which was accordingly done on the 25th of May, 1630. The Jury, which consisted of the Earls of Eglinton, Wintoun, Wigtoun, Carrick, and Air; the Viscount of Drumlanrig; the Lords Erskine, Kilmaurs, Ross, Napier, and Wemyss; Sir James Stewart, Sir George Tarvis, Sir George Forrester, and Sir James Kerr, found by three general Services that David Earl of Strathern "abavus attavi" of William Earl of Monteith died at the King's peace; that the said Earl of Monteith is the nearest and lawful heir of the said David Earl of Strathern "abavi attavi sui⁴;" that Malise Earl of Monteith "proavus abavi" of William Earl of Monteith died at

¹ "Hæredibus suis et assignatis; cui dictus noster Consanguineus et Conciliarius Willielmus Comes de Monteith, est indubitatus hæres linie sanguinis."

² Record of Charters in the Office of the Lord Register; and see APPENDIX, No. XII. p. lxviii.

³ Sir Thomas Hope's "Trew Estait," APPENDIX, No. VIII. p. xxii.

⁴ Printed Evidence before the Lords' Committee of Privileges on the Claim to the Earldom of Airth, 9th of July, 1839, p. 12.

the King's peace; and that the said William Earl of Monteith is the next and lawful heir of the said Malise Earl of Monteith, "proavus abavi sui;" and also that Patrick Earl of Strathern "proavus attavi" of William Earl of Monteith died at the King's peace; and that the said William Earl of Monteith is the next and lawful heir of the said Patrick Earl of Strathern "proavus attavi sui."¹

WILLIAM
SEVENTH EARL
OF MONTEITH.
1630.

All these proceedings respecting the Earldom of Strathern related exclusively to the *territorial* Earldom, and *not* to the *personal* Dignity. In his Renunciation the Earl of Monteith asserted that, as "undoubted heir of blood and successor to David Earl of Strathern," he had "good and undoubted right to claim the said Earldom," but that he renounced all right and interest therein, in consideration of its having been long annexed to the Crown, and of the bounty and goodness which the King had shewn him; and "because it had pleased His Majesty to bestow upon him such satisfaction therefore" as he thought expedient, which "satisfaction" is said to have been 23,000*l.* sterling, and an annual pension of 500*l.* for life.²

¹ Printed Evidence before the Lords' Committee of Privileges on the Claim to the Earldom of Airth, 9th of July, 1839, p. 13.

² Sir John Scot's "True Relation," APPENDIX, No. IX. p. xxx.

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SEVENTH EARL
OF MONTEITH.
1630.

The Earl, however, reserved to himself the lands of Kilbride, which had formed part of the ancient Earldom of Strathern, and which appear to have been granted to his ancestor Alexander, second Earl of Monteith, in 1531¹; and he not only obtained the King's permission to bring actions for the recovery of such lands of the Earldom as were in the possession of private individuals, but the King's Advocate and Record Keepers were commanded to afford him their assistance.

That, in Sir Thomas Hope's opinion, the Earl of Monteith was entitled both to the Dignity, and to the lands of the Earldom of Strathern, under the Charters of King Robert the Second is unquestionable. He admits that he advised the King to that effect; and it cannot be supposed that in so grave a matter, in which the rights and revenues of the Crown were concerned, the Advocate would have acted without the sanction of the other great Legal Authorities of his time. There is, moreover, reason for supposing that the King's Advocate was considered to have displayed equal sagacity and zeal in securing to his Sovereign the lands of the Earldom which were then in the King's hands; for on the very day on which His Majesty ratified the arrangements proposed by Sir Thomas Hope, and promised the Earl of Mon-

¹ Vide, pp. 42, 43.

teith compensation, he acquainted the former that he intended to give him two thousand pounds.¹

WILLIAM
SEVENTH EARL
OF MONTEITH,
1631.

The Earl of Monteith's right to the personal Dignity of Earl of Strathern was soon after solemnly recognized and admitted. In his Renunciation he had expressly stipulated that that proceeding should not "prejudice him or his heirs of their right and dignity of blood belonging to them as heirs of line of David Earl of Strathern;" but in conformity with the usage of the period, the Earl obtained a Patent, dated on the 31st of July, 1631, "ratifying and approving" to the Earl of Monteith and his heirs male and of tailzie, the Title of Earl of Strathern granted by the Charters of King Robert the Second to David Earl of Strathern, in 1371, with the place and precedency which had belonged to that personage.

The Patent recited that the King had called to mind that the Earl of Monteith stands served and retoured undoubted heir of blood to David Earl of Strathern his grandsire, fore grandame's father, son of King Robert the Second; and it then stated the purport of the two Charters by which the Earldom of Strathern had been granted to the said David in 1371; that the Earl of Monteith, as such heir, "had good

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. p. xl.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1631.

right to the said Earldom, yet that he, from respect for the King's person, had by letters of Renunciation of the 22nd of January, 1630, renounced in favour of the King and his successors all right and title thereto, except to the lands and barony of Kilbride," with this express provision, that "the foresaid Renunciation should not be prejudicial to him and his heirs of their right and dignity of blood belonging to him as heir of line of the said late David Earl of Strathern, as the said Renunciation itself more fully imports." The Patent then proceeds:—
"And we earnestly willing that the aforesaid William Earl of Monteith, his heirs male and successors, may enjoy the right and title of the Earldom of Strathern, and succeed to the same title, place, and dignity due to them by the said two Charters and infestments aforesaid, granted by the said King Robert the Second to the aforesaid David Earl of Strathern and his heirs of the said Earldom, in so far as concerns the title, place, and precedency due to them as Earls: Therefore know ye that we have ratified and approved, and by the tenor hereof ratify and approve, the aforesaid title, honour, dignity, and place of Earl to the said Earl of Monteith, his heirs male and of tailzie, who shall henceforth be styled and called Earls of Strathern and Monteith in all times coming, and that they shall bruik, enjoy, and possess the

aforesaid title and dignity in all assemblies, conventions, and parliaments, and all other meeting places whatsoever, with the same privileges, degrees, and places which belonged to the said David Earl of Strathern and his heirs.”¹

WILLIAM
SEVENTH EARL
OF MONTEITH.
1631.

The effect of this Patent was to allow or confirm the Earldom of Strathern, which had been granted to Prince David and *his heirs*, to *his heir of line*, the Earl of Monteith; and so far from being considered as a *new creation* of that Dignity, it is expressly described by Sir John Scot as “a *new ratification* from His Majesty, under the Great Seal, *of his said blood*” as heir of David Earl of Strathern.

Instead, however, of repeating the destination in the Charters of the ancient Earldom to *heirs general* or *heirs of line*, the confirmation extended only to the grantee’s *heirs male and of tailzie*, such being the usual destination of Dignities in the reign of King Charles the First. But if the Earl of Monteith was, as the Patent states, and as the Crown and its law advisers had admitted, undoubtedly entitled to the *personal* Earldom granted to Prince David and *his heirs*, this confirmation to *another class of heirs* could not impair the right of the heirs to whom

¹ Sir John Scot’s “True Relation,” APPENDIX, No. IX. p. xli. A literal copy of the Patent will be found in the APPENDIX, No. XI.

² Ibid. pp. xxvii. xxviii.

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SEVENTH EARL
OF MONTEITH.
1631.

the Dignity stood destined under the original grant, unless it had been regularly surrendered.

Of such surrender, however, there is not only no evidence, but the recognition of the Earl of Monteith's right to the Earldom of Strathern, as heir of Prince David, in itself proves that no surrender was either on record, or was even presumed to have taken place. On the contrary, the King's Advocate, considering that the Charters by which the Earldom of Strathern was granted, were then in *viridi observantia*, advised the Crown to admit the Earl of Monteith's rights, by accepting from him, and compensating him for, a renunciation of part of those rights in its favour: and it is material to observe that all the proceedings on the subject were most carefully considered, and had evidently been submitted to, and sanctioned by, the highest Law Authorities of Scotland.

The Earl of Monteith immediately assumed the title of EARL OF STRATHERN, and sat in Parliament as "Earl of Strathern" on the 22nd of September, 1631, and 13th of April, and 7th of September, 1632.¹

On the 26th of November, 1631, by the description of "William Earl of Strathern and Monteith, Lord Kilpont and Kilbride, President of the Privy Council, Great Justice of Scotland," he obtained a grant of the barony of Drummond,

¹ Acts of Parliament of Scotland, vol. v. pp. 6. 237. 239. 244.

proceeding on the resignation of John Earl of Perth, to him and Lady Agnes Gray, Countess of Strathern and Monteith, his wife, and the longer liver of them, and to the heirs male procreated between them; whom failing, to the nearest heirs male and assigns of the said Earl of Strathern whomsoever.¹

WILLIAM
SEVENTH EARL
OF MONTEITH.
1632.

By a Charter dated on the 14th of April, 1632, the King, proceeding on the resignation of Alexander, Earl of Linlithgow and Callendar, granted to the Earl of Strathern and Monteith the *lands* and *barony* of *Airth*, in the shire of Stirling, to hold to him and his Countess and the survivor of them, and the heirs male procreated between them; whom failing, to the heirs male and assigns of the said Earl whomsoever²; and on the 21st of July following, the Earl of Strathern and Monteith received another Charter of the lands and barony of Airth, with exactly the same limitations as in the preceding Charter.³

The admission of the Earl of Monteith to the ancient Earldom of Strathern roused the jealousy of the Peers over whom he had thereby obtained precedence; and the fears of numerous persons were excited, lest his claim to the territorial Earldom should affect their right to their estates. A powerful confederacy was formed

¹ Record of Charters in the Office of the Lord Register.

² Ibid.

³ Ibid. Book LIV. No. 50.

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SEVENTH EARL
OF MONTEITH.
1632.

against him ; and his own ambition and imprudence having afforded ample materials for the designs of his enemies, his fall was even more rapid than his elevation.

A statement was prepared, and circulated by the Earls of Seaforth and Tullibardin, Sir John Scot of Scotstarvet, Director of the Chancery, and others, in which it was asserted that the admission of the Earl of Monteith to the Earldom of Strathern, as heir of Prince David, would be “ dangerous and prejudicial to His Majesty, to the public peace, and to the state of the Country ¹, on the ground that as the children of King Robert the Second by Elizabeth Muir were born before marriage, the recognition of the Earl of Monteith as heir of Prince David, the eldest son of King Robert’s marriage with Euphemia Ross, would give him a better right to the Crown of Scotland than the King himself. Six “Reasons” were assigned, to shew the expediency of forbidding the Earl of Monteith to pursue his claim to the Earldom of Strathern : —

1st. That it was not judicious for His Majesty to promote the succession of the descendants of Euphemia Ross to such an estate and power in the Country, as might, in case of a commotion, “ give them occasion to think upon the Kingdom.”

¹ Sir John Scot’s “ True Relation,” APPENDIX, No. IX. p. xxvii.

2nd. That it would be an imputation upon His Majesty's honour to restore that Earldom to the successors of Malise Graham, from whom it was taken by King James the First, "a virtuous and just Prince;" because such restoration would be to asperse that Monarch with "injury, oppression, and avarice," and be a justification of his murder by Sir Robert Graham, for having wrongfully usurped the Earldom.

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SEVENTH EARL
OF MONTEITH.
1632.

3rd. That as the Earldom had been annexed to the Crown by Parliament, it would be inexpedient to repeal that proceeding.

4th. That as the Earldom had been "set in few" by Parliament to various tenants in the year 1508, many "honest gentlemen" would be ruined and divested of their estates if it were to be again separated from the Crown.

5th. That if the Earl of Monteith were to recover the Earldom, it would produce great diminution of His Majesty's "rent and obedience," because much land and many persons would be subjected to the Earl, as they would then hold of him; among others, the Earls of Montrose, Perth, Tullibardin, the Viscount of Duplin, Lord Maderty, &c.

6th. That King James the Sixth always refused to grant the Title, and still more the territorial Earldom of Strathern, to any subject, saying to those who sought it, that "he had no

WILLIAM
SEVENTH EARL
OF MONTEITH.
1632.

more for the blood and slaughter of King James the First.”¹

Sir John Scot afterwards examined the Registers, and made a minute of all gifts which had been conferred on the Earl of Monteith at the time when he became a Privy Councillor; and having communicated his notes to Sir James Skene and Sir Archibald Aicheson, joint Secretary of State, they advised him to seek the assistance of Mr. Maxwell and Sir Robert Dalzell, two of the King's servants, who were then going from Scotland to Court; but they refused to engage in the affair until they had obtained the sanction of the Earl of Haddington, “who assured them that there would be no hazard in informing the King, but that it would be good service to inform him thereof, as follows;” namely, of the Earl of Monteith's pretensions to the Earldom of Strathern; of his having obtained, “in satisfaction for his right,” not only 23,000*l.* and a pension of 500*l.* for life, but also a new gift of part of the said Earldom; of His Majesty's having accepted a renunciation from him of all right to the Earldom as heir of David Earl of Strathern, in which he reserved his right of blood; of his having been retoured heir general to that personage, and of his having

¹ Sir John Scot's “True Relation,” APPENDIX, No. IX. pp. xxviii.—xxx.

“at last procured a new ratification from His Majesty, under the Great Seal, of his said blood: which things being rightly considered, it will be found that His Majesty has been greatly wronged in many things, which, if His Majesty be put to trial, shall be sufficiently cleared.”¹ This must have occurred about September 1632.

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OF MONTEITH.
1632.

As soon as Sir John Scot's "Paper"² containing the above statements was shown to King Charles, he immediately sent Sir Robert Dalzell to Edinburgh with the following written instructions, dated on the 2nd of October, 1632:—

“Robin Dalzell, Whereas I have been informed by you and James Maxwell that the grant of the Earldom of Strathern, which I have given, is greatly prejudicial to me both in honor and matter of State, insomuch that he either hath or may serve himself heir to King Robert the Second; Therefore since it doth seem to lay a heavy aspersion upon a man whom I both do and will esteem till I see evident cause to the contrary, he having done me many good ser-

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. p. xxxi.

² It does not clearly appear, whether this "*Paper*" only contained the account of what had taken place respecting the Earldom of Strathern, or whether it included the six "Reasons" mentioned in pp. 46, 47., and given in Sir John Scot's "True Relation" (APPENDIX, No. IX. pp. xxviii.—xxx.); but it is most probable that those "Reasons" formed part of the "*Paper*."

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vices, I command you to produce your authors, that I may either punish them for their great aspersion, or reward them for their good service in so important a discovery: otherwise I must take James and you for my authors, judging you as ye shall prove your allegations. Make haste in this, for I must not suffer a business of this nature to hang long in suspence. Whitehall, 2nd October, 1632.”¹

On Sir Robert Dalzell’s arrival in Edinburgh, he convened the persons from whom he and Maxwell had obtained the information respecting the Earldom of Strathern, namely, Sir James Skene, President of the Court of Session, Sir Archibald Aicheson, Secretary of State, and Sir John Scot of Scotstarvet, Director of the Chancery, before Sir Thomas Nicolson, Sir Lewis Stewart, and Mr. Andrew Aytoun, three Advocates, to whom the six “Reasons”² were submitted.

When the first of those “Reasons” was read, Sir Thomas Nicolson took fright, rose from his seat, declared he would “hear no more of that,” and, swearing with a great oath, that “they would all be hanged who were accessory to

¹ Sir John Scot’s “True Relation,” APPENDIX, No. IX. p. xxxi.

² For a copy of these “Reasons,” see Sir John Scot’s “True Relation,” APPENDIX, No. IX. pp. xxviii.—xxx.

that business, or had hand in prosecuting that service," instantly quitted the house. The two other Advocates, however, heard the "Reasons," and gave their opinions respecting them under their hands, "which they did upon Dalzell's warrant, (addressed to Sir James Skene, Sir Archibald Aicheson, and Sir John Scot,) subscribed by him in their presence at Edinburgh in November, 1632."¹

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After reciting the King's instructions, the Warrant stated that Sir James Skene, Sir Archibald Aicheson, and Sir John Scot were the authors "of whom the said James Maxwell and he had heard the same;" that seeing His Majesty had directed him "to take the advice and opinion of lawyers" on the subject, he required them "to propone all such questions, difficulties, doubts, and scruples that any of you have or can find" in the proceedings relating to the Earldom of Strathern, and in the "circumstances, consequences, and dependencies thereof," for His Majesty's information.²

Six "Propositions"³ concerning the Earldom of Strathern" were accordingly drawn up and submitted to Sir James Skene, Sir Archibald

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. pp. xxxi. xxxii.

² Ibid. p. xxxii.

³ See those Propositions in Sir John Scot's "True Relation," APPENDIX, No. IX. pp. xxxiii. xxxiv.

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Aicheson, and Sir John Scot. Their opinions were, of course, condemnatory of the pretensions of the Earl of Monteith to the territorial Earldom of Strathern, as well as of his conduct in asserting himself to be heir in blood of Prince David.

These learned persons, in answer to the Propositions, reported that the General Service of the Earl of Strathern gave no right to that Earldom, because it was annexed to the Crown by King James the Second; and that, as the Earl had no right to it, his Renunciation in favour of the King was of no effect, but, on the contrary, weakened His Majesty's right by accepting a right from him, and "acknowledging a necessity of renunciation when there was no need;" that His Majesty, by granting the Lordship of Urchat to the Earl, had wronged himself, under the idea that it was part of that Earldom, by giving away that which was his own, and would also wrong those who held under the Crown; that the Earl could not be retoured and infeft in that Earldom as nearest heir of David Earl of Strathern, conformably to the clause in the Renunciation, because it was annexed to the Crown.

To the fourth of those Propositions (which, like the fifth and sixth, was obviously put with the view of alarming the King's jealousy and exciting his displeasure),—"Is it not boldness that the said Earl should have served himself

heir of blood to David Earl of Strathern, eldest lawful son of the first marriage to King Robert the Second, whereby he is put in degree of blood equal to His Majesty?" they replied, "In our judgment the boldness seems too great."

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The inference thus sought to be raised was artfully supported by the next Proposition:—
"It is craved if the Earl of Strathern may serve himself heir to King Robert the Second, seeing he is already served heir to David Earl of Strathern, eldest son of King Robert the Second?" which was, in other words, almost demanding, whether, if the Earl were admitted heir to Earl David, he would not also be heir to the Crown of Scotland? To this question they discreetly answered,— "If the case were among subjects, we see nothing to the contrary."

The last Proposition was dexterously framed with the view of shewing the King the presumption of the Earl of Monteith, and the effect of his proceedings on His Majesty's interests:— "It is craved whether the King is prejudiced in honour and state by acknowledging the said Earl to be undoubted heir to David, Earl of Strathern and consequently to be in degree of blood equal to His Majesty?" to which it was no less astutely answered, — "That, apparently, if His Majesty had known the consequence of it, for reason of State, he would never have done it; and it seems to us His Majesty's honour to be interested in

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acknowledging any subject to be equal in blood to himself.”¹

It is impossible to attach due weight to those Propositions and to the Answers to them, without bearing in mind that the *status* of King Robert the Second's children by Elizabeth Muir was then a matter of extreme delicacy. The learned triumvirate, by asserting that King Robert's marriage with Euphemia Ross was his *first* marriage, shewed their disbelief of his previous marriage with Elizabeth Muir, and thus threw great doubt on the right, by birth, of His Majesty's ancestor, King Robert the Third, to the Throne.

The expression “equal in blood” seems to have been used in an equivocal sense, and its true meaning would rather appear to be “superior in blood,” because all the descendants (who were then very numerous) of any child of King Robert the Second, or of the child of any subsequent King of Scotland, were “equal in blood” to King Charles the First, though no jealousy was felt respecting their descent from the Blood Royal. Unless, however, King Robert the Second's issue by Elizabeth Muir were illegitimate, or ought to have been postponed in the succession to his children by Euphemia

¹ Sir John Scot's “True Relation,” APPENDIX, No. IX. pp. xxxiii. xxxiv.

Ross, no danger to the rights of King Charles could possibly have arisen from the Earl of Monteith's having proved himself sole heir of Prince David.

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The Answers of the three Commissioners were sent on the following day to the King by Sir Robert Dalzell¹; but the Earl of Monteith's enemies, fearing that their design against him might still be frustrated, and themselves endangered, agreed that Sir John Scot himself should go to the King, taking with him all papers relating to the affair; and Sir James Skene and Sir Archibald Aicheson authorized him to represent them, by signing a paper, "obliging themselves in their lives and estates to stand to whatsoever Sir John Scot should say to His Majesty in that behalf in their names."²

On Scot's arrival at Hampton Court, about the 27th of December, 1632, he had a long conference with His Majesty, and shewed him a remarkable Paper which he had caused his brother-in-law, the celebrated William Drummond of Hawthornden, to draw up, deducing from the History of England, Scotland, and Portugal, various precedents in support of the opinions which he, Skene, and Aicheson had given, respecting the danger of admitting the Earl of

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. p. xxxiv.

² Ibid. p. xxxv.

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Monteith to be heir of David Earl of Strathern. The King instantly commanded this Paper to be read in his presence.¹

After adverting to the effect of the restoration in blood, by King Henry the Sixth, of Richard Duke of York, (who afterwards laid claim to the Crown,) and to his descent from King Edward the Third, and allowing his descent and title, the Paper observed, that “the like may be alleged in the title of the Earl of Strathern.” It then boldly asserted, that “the children of the first marriage by Common Law are to be preferred in succession to the children of the second; for the marrying of Elizabeth Muir did but legitimate and make her children succeed after the children of the first marriage;” and it was added, “that as for the authority of Parliament, if the authority of Parliament may confer and entail a Crown from the lawful heirs thereof to the next apparent heirs, or if any oath given unto a King by man’s law should be performed, when as it tended to the suppression of truth and right, which stands by the law of God, then if one Parliament hath power to entail a Crown, whether may not another Parliament upon the like considerations restore the same to the righteous heirs?”

Not satisfied with so audacious an intima-

¹ Sir John Scot’s “True Relation,” APPENDIX, No. IX. p. xxxv.

tion that the King's right to the Throne of Scotland might be disputed, Drummond seems even to have suggested that Monteith should be removed by violent means;—for his Paper proceeded to suggest, that it was a point for consideration, whether “if Queen Mary of England who cut off the head of Lady Jane Grey, and Queen Elizabeth who did the same to Queen Mary of Scotland, her next kinswoman, were living, [they] would have suffered [any one] to enjoy the opinion of being nearer to the claim of their Crowns than themselves.”

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In the following passage, it was more than insinuated that the Earl of Monteith had served himself heir to the Crown, through the oversight or negligence of the King, that he had thereby been guilty of high treason, and that he and his whole race ought to be extirpated:—

“It is to be considered also, if a subject serving himself heir to a Crown by the oversight of the Prince and negligence, indirectly and in crafty-coloured terms, notwithstanding of whatsoever protestations of his Advocate in the contrary, may be accused of high treason, and whether a Prince may justly keep under, the race of such whose aspiring thoughts dare soar so nigh a Crown, as they have been kept these two hundred years bygone, for reason of State, unless the Prince exalt them to give them a more deadly blow and extirpate them and

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their whole race, suborning mercenary flatterers to make them aim above their reach ‘*dum nesciunt distinguere inter summa et præcipicia princeps qui persequitur honorat, extollit natu ut lapsu graviore ruat.*’”¹

To give strength to these arguments, verbal statements were made of certain treasonable speeches and acts of the Earl of Monteith. Sir Robert Dalzell, who was present at Scot’s audience of the King, told His Majesty “that the Earl was so insolent in his speeches that it could be proved by various witnesses that he was heard to say, that ‘he had the reddest blood in Scotland,’ meaning that he was nearest to the Crown; whereat the King seemed to be commoved.”

His Majesty, however “commoved,” was evidently aware of the real motive of their proceedings; and he dismissed Sir John Scot and Maxwell without any other observation, than the pathetic and characteristic remark, that “it was a sore matter that he could not love a man, but they pulled him out of his arms.”²

Monteith’s friends, the Earl of Morton and the Earl of Kinnoull, the Chancellor, being informed of the object of Sir John Scot’s arrival

¹ Sir John Scot’s “True Relation,” APPENDIX, No. IX. pp. xxxv.—xxxviii.

² Ibid. p. xxxviii.

at Court, took measures for counteracting his designs, Morton stipulating, as the price of his services, that Monteith should solicit the King to give him the Order of the Garter. They represented to His Majesty that the charges brought against Monteith were frivolous and unfounded ; but, notwithstanding the strong bias in the Royal mind in his favour, Charles gave Sir John Scot another interview, to hear his further accusations against Monteith, when he again adduced “ certain quotations from History ” and other facts, to shew that His Majesty had been abused both by his Advocate Sir Thomas Hope, and by the Earl. Sir John Scot then produced copies of His Majesty’s Letters of November, 1629, of the Earl’s Renunciation, and of the Patent of 1631, confirming the Earldom of Strathern, already noticed, and stated that “ Monteith, by serving himself heir to the eldest son of the former marriage, might have served himself heir to the father of that son.” He then shewed the King a pedigree which the Earl had had drawn up, in support of his claim to the lordship of Urchat, “ wherein His Majesty was placed on the left hand ; ” on seeing which, Scot says, and it may readily be credited, “ the King was somewhat commoved therewith.”¹

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¹ Sir John Scot’s “ True Relation,” APPENDIX, No. IX.
p. xliv.

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Although these measures were not attended with all the baneful results which their authors expected, they were partially successful. King Charles's jealousy was sufficiently roused to induce him to command that all the proceedings respecting the Earl of Monteith's right to the Earldom of Strathern should be cancelled; and it would seem that objections were also entertained to his bearing his former Title of Monteith.

"On the Earl's coming to Court," in February, 1633, and "prostrating himself to His Majesty," says Sir John Scot, "he acknowledged his fault;" and through the intercession of the Chancellor and the Earl of Morton "got a favourable acceptance; only he was told by the King, that he behoved to quit that Title of STRATHERN and take that of AIRTH, which he did¹;" and he was soon after commanded to "dash out of his windows the Arms of the Earldom of Strathern."²

A Warrant for issuing the Patent of the Earldom of Airth was signed by the King at Whitehall, on the 21st of January, 1633; but the Patent itself was not sealed until the 28th of March following, just six days after the Court of Session had reduced the Retour of

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. pp. xlv. xlv.

² Ibid. p. xlv.

the Earl as heir of David Earl of Strathern, and cancelled the new Patent of that Earldom.

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These dates, therefore, tend to confirm the idea that the Earldom of Airth was intended to be an *exchange* or *compensation* for the *original* Earldom of Strathern, and, consequently, that it was to descend to the *same class of heirs as those to which that Dignity was destined*. The dates also shew that the Patent of 1631, by which the Earldom of Strathern was confirmed to the Earl of Monteith and “his heirs male of tailzie,” must have been brought to the attention of the framers of the Patent of the Earldom of Airth; and if it were designed to limit that Dignity to the *same heirs*, the *same words* would undoubtedly have been used for the purpose.

It is manifest from the whole of these proceedings, that the Earl of Monteith’s reason for having surrendered the Title of Strathern, and consented to the reduction of the services as heir of Prince David, was to avoid the perils of a charge of high treason; that so far from having *sought* the new Earldom of Airth, that Dignity was *actually forced upon him*, under circumstances which admitted neither of refusal nor remonstrance; and that it was determined he should lose every title which had ever been borne by the Royal Family, and that he should bear the name of an Earldom which could excite no historical or genealogical associations.



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The Earl of Monteith was accordingly divested of the Title of STRATHERN ; but instead of reverting to his former Title of MONTEITH, which had been borne by his ancestors or himself uninterruptedly for more than two hundred years, the name of that ancient Dignity was merged, and all but extinguished, in the new creation of AIRTH.

The haughty character and impetuous temper of the Earl prove the danger to which he must have considered himself exposed, when he consented to such indignity ; and he was undoubtedly aware that still greater degradation awaited him, with the axe and the block in no distant perspective, had he hesitated, much more refused. The mortification of losing the Royal Title of Strathern, and exchanging, as it were, the ancient and highly valued designation of Monteith for one entirely unknown in history, must, to his impetuous spirit, have been severe ; and perhaps in no other family than his own could a precedent exactly similar for such an act of injustice be found.

It is, however, very remarkable, that his ancestor, Malise Earl of Strathern, should have been stripped of that very Title, and compelled to accept the Earldom of Monteith, to satisfy the rapacity of King James the First ; and that the same Title of Strathern should have been recovered by his descendant and again have been

taken away ; while that of Monteith was all but extinguished in a name, which then, for the first time, found a place in the Peerage of Scotland.

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Before the Patent of the Earldom of Airth is more fully alluded to, it is necessary to state what afterwards took place in relation to the Earldom of Strathern. When Sir John Scot waited upon the King to take leave, on his return to Scotland, he received reproaches instead of thanks for his conduct. His Majesty censured him for having so long concealed the information against the Earl of Monteith, and for having issued Writs for serving him heir of David Earl of Strathern. Scot's reply, if indeed he had the insolence to utter such a remark, shews his discontent that the Earl of Monteith had not experienced severer treatment ; for he represents himself to have said to the King, that he had "revealed it soon enough for any amends that were likely to follow ;" adding, that "it was the duty of his office to issue the writs, the error being in sending back the retour."¹

The affair bore so serious an aspect, that proceedings were taken against the Jury who had found the Earl of Monteith heir to David Earl of Strathern ; against Sir Lewis Lauder, the Sheriff

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. p. xlv.

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of Edinburgh, and his Deputes; against the Sheriff-Clerk; and against Sir John Scot, Director of the Chancery, by whom the Writs were directed to the Sheriff, and the Services retoured to the Chancery. The Jury and Sheriff gave in a defence of their conduct to the Lords of Session, wherein they justified themselves by the King's own proceedings, in having admitted Monteith's right to the Earldom of Strathern, in His Majesty's having accepted a Renunciation from him, and compensated him for the same, and in requiring the Service in question for the purpose of strengthening that Renunciation; in allowing him the Dignity by a Patent under the Great Seal, "making the Service and Retour the narrative of the said Patent;" in having commanded the Clerk Register to deliver such Records as the Earl might think necessary in support of his rights; and in having rewarded Sir Thomas Hope with a promise of 2000*l.* for his pains.¹

This justification was so conclusive, that His Majesty issued a Warrant to the Lords of Session on the 22nd of February, 1633, signifying his pleasure that the Jury should be declared free from blame.²

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. pp. xlv. xlv. ; and Lord Durie's "Decisions," &c., APPENDIX, No. XII.

² Sir John Scot's "True Relation," APPENDIX, No. IX. pp. xlviii. xlix. ; and Durie's "Decisions," &c., APPENDIX, No. XII.

On the 20th and 23rd of March, 1633, proceedings were taken in the Court of Session for reducing or cancelling the Retours and Services of the Earl of Monteith as nearest heir of blood to Euphemia Countess of Strathern, to Patrick Graham her husband, and also to her father David Earl of Strathern, son of King Robert the Second. It was alleged on behalf of the Crown, that the King, being better informed, might reduce those instruments; that the Earl of Monteith was not heir, and that the King was sole and only heir to Earl David, "seeing he died without succession, as all the other brethren of Earl David died without succession; and the King's Majesty was nearest, being lineally descended of Robert the Third, brother to Earl David;" and it was found that "the King might now quarrel these Writs, and the wrongous information and omission of the officers could not prejudice the King; and in this process error being also concluded against the assisers, they were assoilzied from all error and punishment, because it was found that they had just and probable cause to have served him heir, where the King's Advocate compeared the time of the service, and did not oppone thereto."¹

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The Retours and Services, together with the

¹ See the extract from Lord Durie's "Decisions of the Lords of Session," p. 683.; and the Proceedings on the Register of Decrees in the APPENDIX, No. XII.

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Patent of the 13th of May, 1630, confirming to the Earl of Monteith the barony of Urchart, and the camp of Brathwell ; and the Patent of the 31st of July, 1631, confirming the Dignity of Earl of Strathern, were accordingly all reduced and cancelled by the judgment of the Court of Session.

No warrants, extracts, or any other record, in support of this judgment, can be found ; and nothing is known on the subject except the Proceedings on the Register of Decreets¹, the account given of it by Sir John Scot¹ and by Lord Traquair², and the reports in Lord Durie's "Decisions," who adds, as if the fact afforded some explanation of those extraordinary measures, that Lord Traquair (who is shewn by his own statement to have been entirely influenced by what he considered the King's interests, "whatever they might be"), "the Treasurer Depute, sat and judged, reasoned and voted, albeit he was pursuer."¹

The Reduction was attended with many difficulties, and led to serious disputes between all the parties concerned. On the 16th of March, 1633², Lord Traquair, in a letter to the Earl of

¹ See Proceedings on the Register of Decreets, and the extracts from Lord Durie's "Decisions of the Lords of Session," in the APPENDIX, No. XII.; and Sir John Scot's "True Relation," APPENDIX, No. IX. p. xlv.

² See APPENDIX, No. XIII. The only date to Lord Traquair's Letter is March 16th ; but it was certainly written in the year 1633.

Morton, describing what had occurred, and alluding to a dispute between the King's Advocate and the Earl of Monteith about the documents produced at the Service, says, "The Advocate, in presence of all the Lords, confessed he had seen, before the Service, a Charter whereby it was evident that Euphemia was only daughter to Earl David : a second, whereby it was evident that Patrick Graham was married to Euphemia : a third, whereby it was clear that Malise was Patrick's son¹; and from Malise to the Earl of Strathern, now present, there seems to be no question of succession. None of the former three are called for in the Summons of Reduction, and some of the Lords think that, if they were produced, the Reduction would be the more difficult." He observes, that "it has been madness to have attempted such things; but seeing they have been once moved, I wish some such course may be taken as may secure our Master's interest, whatever it be : " he suggests, that all instruments that may "concern this business that can be found, either in the Registers or elsewhere," should be cancelled and destroyed.¹ He says, "we have had many odd passages in this business which I dare not entrust to paper;" and intimates that the proceedings

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¹ It is very doubtful whether the Charters alluded to are now extant; and it seems probable that they were destroyed, according to Lord Traquair's suggestion. See p. 15. ante.

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had been conducted according to the King's personal directions; for he observes, "I wish our Master should not trust altogether to his own judgment, but that it may be done by the advice of some of his faithful servants;" adding, "I believe he intends not to stir from hence shortly; at least till he see a full and final end to this business, wherein I have not been wanting, to my power, to do him service; but I fear I have a thankless master."¹

The Earl of Airth's misfortunes did not end with the loss of the Title of Strathern, and the merger of that of Monteith; though he continued, says his enemy, Sir John Scot, "still in his grandeur and whole places," until the time of King Charles's arrival in Scotland, for his Coronation, in June 1633. Having failed in his promise to obtain the Garter for the Earl of Morton, and being suspected of seeking that honour for himself, Morton had become exasperated against him; but, despairing of injuring him more deeply in the mind of the King, he and the Earl of Kinnoull, the Chancellor, endeavoured to work on the fears of the Queen, by representing the Earl of Airth's former proceedings "in prejudice of her Royal children, and assuring her that if those impediments were not totally removed, and Monteith censured and punished for so high

¹ Original Letters relating to the Earldoms of Strathern, Monteith, and Airth, APPENDIX, No. XIII.

a presumption, it would not fail to be hazardous to the Prince and his descendants.”¹

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The Queen became alarmed, and immediately communicated her fears to the King, who promised to adopt measures on the subject before his return to England. His Majesty accordingly ordered Lord Weston, the Earl of Carlisle, and the Secretary of State to confer with Sir John Scot, and view all his papers. Having read them, Lord Weston exclaimed with an oath, that the Earl of Airth “wanted nothing but a sharp sword to be King.”¹

A few days afterwards His Majesty went to Holyrood House to investigate the allegation against Airth, that he had said that “his blood was the reddest blood in Scotland, and that the King was obliged to him for his Crown;” and finding by the evidence of the Earls of Southesk and Ethie, and the Countess of Mar, that those speeches had been uttered by the Earl², His Majesty, after his arrival in London, sent the following commands to the Lord Chancellor of Scotland, dated at Whitehall, on the 9th of October, 1633:

“Right trusty, &c. Whereas upon the commission for trial of some treasonable speeches

¹ Sir John Scot’s “True Relation,” APPENDIX. No. IX. pp. xlix. l.

² Ibid. p. l.

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by the Earl of Airth, we find sufficient proof to believe the same; and in regard likewise that he, by his own acknowledgment, confesseth in effect as much, together with the great fault committed in his service to the Earldom of Strathern, as is contained under his hand in his late submission; we therefore find that he is not worthy to enjoy the charges which he hath formerly born in the State by our gift, nor pension allowed to be paid to him out of the Exchequer. Wherefore we have thought good hereby to signify the same to you; and it is our pleasure that ye require the said Earl, in our name, to surrender up into our hands these his charges of Presidentship of our Council, Justice General, and place in S^ession, to be disposed of as we shall appoint, as likewise the gift of the said pension; and in the mean time that ye confine him to his own house, and the bounds belonging thereunto, which are not near to Holyrood House, where the public meetings of our Estate are kept.”¹

On the 8th of November, 1633, the Privy Council summoned the Earl of Airth before them, and the above Letter to the Chancellor being read to him, he “acquiesced with all due reverence to the same, and made a surrender of all places, honours, privileges, and immunities,

¹ Sir John Scot's "True Relation," APPENDIX, No. IX. pp. li. lii.

as also of his pension out of the Exchequer¹,” and executed a written instrument to that effect.²

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It is but justice to the Earl of Airth that his solemn denial of the treasonable speeches laid to his charge, should be added to the statements of his enemies. In a paper in his own hand-writing, he said, —

“ Notwithstanding that I have examined myself even from my very infancy, and that I protest to God I cannot remember that ever I spake these words in Sir James Skene’s paper, or any words to that sense, yet, seeing a person of quality has affirmed so much to His Majesty, as in the strictness of law might be a probation, I do absolutely submit myself to His Majesty, to be disposed of at his pleasure. And concerning the services of Strathern, although I protest to God I did not proceed one iota in them, but by the advice and direction of some [one] who has special trust from His Majesty in matters of law, and whose judgment is a great deal better nor mine in business of that kind, which I am able to verify, yet, seeing it is conceived as a thing consisting to have been done, I do likewise in that submit myself to my gracious Master, to be disposed upon his pleasure.”³

¹ Sir John Scot’s “True Relation,” APPENDIX, No. IX. p. li.

² Ibid. p. lii.

³ Preserved among the papers at Gartmore, and printed in a volume entitled “Notes, Historical and Descriptive, on

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In May 1633 the Earl of Monteith appears to have sent a defence of his conduct to the Earl of Morton, which he entreated him "to peruse seriously, for in good faith it is a true one;" adding, pathetically, "Suffer me not to get wrong: this is all I desire, and by it you will please God, do good service to His Majesty, and oblige him."¹ There is also other evidence that Lord Monteith asserted his innocence of the charge, and which also shews the danger in which he was supposed to stand. On the 10th of July, in the same year, William Maxwell, an Advocate in Edinburgh, wrote to his cousin, Sir John Maxwell of Pollok, "He [the Earl] is to be forfeit and adictit to perpetual prison: he stands in his defence and denial both of the words and of the equivalency thereof, and alleges nothing proven: but the contrary is credibly reported."²

The Patent of the Earldom of Airth was as

the Priory of Inchmahome." By the Rev. William Macgregor Stirling. 4to. Edin. 1815. pp. 138. There was also in the same collection a Letter thus endorsed by the Earl of Airth: "His Ma'ties Letter to myself for calling the Advocates togidder concerning the reduction of Stratherne," dated . . day of December, the year of God 1632," and addressed "To my trustie and well-beloved Cousine and Counsellour, William, Earle and Constabill of Stratherne, President off our Counsell of State." Ibid.

¹ Original Letters, APPENDIX, No. XII.

² Riddell's Remarks upon Scotch Peerage Law. 8vo. 1833. p. 41.

extraordinary as the circumstances which produced it; but its terms cannot be fully understood without a careful consideration of the Earl of Monteith's position at the moment, and of the nature of the Dignities which he had inherited, or which had been previously confirmed to him.

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Of that Patent the following is a literal translation :—

“ Charles, by the Grace of God, of Great Britain, France, and Ireland, King and Defender of the Faith; to all his good men to whom the present letters shall come, greeting: Know ye, inasmuch as we having found that the late James the First, King of the Scots, our predecessor of most illustrious memory, by his charter under his great seal, of date the sixth day of the month of September, in the year of the Lord one thousand four hundred twenty-eight, and in the twenty-second year of his reign, gave, granted, erected, and disposed to his late trusty and well-beloved cousin, Malise Earl of Monteith, and his heirs, all and whole the lands within Monteith in the said charter mentioned, and erected the same into a whole and entire Earldom, to be called in all future time, the Earldom of Monteith, in manner as in the said charter of the date aforesaid is more fully contained: To which same Malise Earl of Monteith, our very trusty and well-beloved councillor, William Earl of

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Monteith, President of our Privy Council, is served and retoured undoubted and lawful heir of line and succession ; And We, recalling to our mind the singular excellent and faithful services rendered and performed to us by our aforesaid trusty and well-beloved cousin and councillor, William Earl of Monteith, President of our said Privy Council, of our own will and for the public good of our Realm, and his constant purpose of persevering therein, which We of our benign good pleasure have resolved to keep in remembrance, that others may be induced by his example to perform the like faithful services. And, in the meanwhile We, willing to erect the lands and barony of Airth, to the said Earl heritably belonging, into one free Earldom, with the title and dignity of Earl of Airth, in manner hereafter mentioned, have therefore erected, and by the tenor of these presents do erect, to and in favour of the aforesaid William Earl of Monteith, and of his heirs, the lands and barony of Airth aforesaid into one free Earldom, to be in all future time named the Earldom of Airth, and to the same have united and annexed, and by the tenor of these presents do unite and annex, the Earldom of Monteith, without prejudice whatsoever to the aforesaid charter of the Earldom of Monteith, granted by our aforesaid most illustrious predecessor, James the First, King of the Scots, of happy memory,

to the before-named late Malise Earl of Monteith, of date the said sixth day of the month of September, in the year of our Lord one thousand four hundred twenty-eight, or of any part or point thereof, to remain in its full vigour, force, and integrity, as before, in nowise prejudiced or derogated, like as We of our certain knowledge and proper motion have made and constituted, and by the tenor of these presents do make and constitute, the aforesaid William Earl of Monteith and his heirs Earls of Airth, and to the same Earldom have united and annexed, and by the tenor of these presents do unite and annex, the said Earldom of Monteith, with all liberties, privileges, and immunities to a free Earldom pertaining; and specially with place, priority, and precedency, due to the said Earl and his predecessors, as Earls of Monteith, in whatsoever parliaments, conventions, public assemblies, and otherwise howsoever, before the Earls whomsoever made, erected, or created since the said sixth day of the month of September, in the year of the Lord one thousand four hundred twenty-eight, which is the date of the said charter of the aforesaid Earldom of Monteith, granted as said is by the said late James the First, our most illustrious predecessor, of happy memory, to the aforesaid late Malise Earl of Monteith and his heirs. And We will, grant, and ordain, that henceforth the aforesaid

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William Earl of Monteith and his aforesaid heirs shall, in all future time, have, brook, and enjoy to them the name, style, title, and dignity of Earls of Airth, and that with place, priority, and precedence, before all other Earls, to them previously due by virtue of the said charter granted to the said Malise late Earl of Monteith and his aforesaid, on the aforesaid sixth day of the month of September, in the aforesaid year of the Lord one thousand four hundred twenty-eight. In witness whereof We have to these presents commanded our Great Seal to be affixed at our Palace of Whitehall, the 21st day of the month of January, in the year of the Lord one thousand six hundred thirty-three, and in the eighth year of our reign.”¹

The first observation that occurs upon this Patent is, that there is a discrepancy in the date which it assigns to the Charter by which King James the First is there said to have created the Earldom of Monteith, because the 6th of September in the 22nd year of that reign was in 1427, instead of 1428²; and this mistake is repeated four times.

¹ A copy of the original Patent will be found in the APPENDIX, No. XIV.

² The Charter erecting the lands of Craynis, &c. into the Earldom of Monteith, is dated on the 6th of September, in the 22nd year of the reign of King James the First; but *the year of our Lord is not mentioned*. See APPENDIX, No. VII.

There can be no doubt that the Earldom of Monteith alluded to in the preamble to the Patent of the Earldom of Airth was the *territorial* Earldom, and not the *personal* Dignity; and it is no less clear, that the free Earldom of Airth erected by that Patent out of the lands and barony of Airth in favour of William Earl of Monteith “and his heirs,” was a *territorial* Earldom.

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To the *newly* created *territorial* Earldom of Airth, the next clause *unites* and *annexes* the *old territorial* Earldom of Monteith, without prejudice however to the Charter of the 6th of September, 1428 (1427), by which it was created, — the object of that proviso being, apparently, that if any thing should ever militate against the annexation, then, in that case, that the *territorial* Earldom of Monteith should be regulated by the Charter of 1428, and not by this patent.

The Patent, up to that point, does not contain a word respecting the *personal Dignity* of Earl of Airth; nor is it even alluded to, except in the declaration of the King’s intentions, and then only parenthetically. Having recited the Charter by which the *territorial* Earldom of Monteith had been created to Malise Earl of Monteith and *his heirs*; and having stated the fact that William Earl of Monteith (the grantee), had been “served and retoured undoubted and lawful *heir of line and succession*” to Earl Malise (a

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service which could not have had any effect with respect to Honours or lands descendible to the heirs *male* of his said ancestor, and which was therefore meant to apply to a succession which he could take up only as *heir of line*), and having created a *new territorial* Earldom of Airth in favour of the grantee and *his heirs*, and united and annexed thereto his old *territorial* Earldom of Monteith, the Patent proceeds to make and constitute the said William Earl of Monteith and *his heirs* EARLS OF AIRTH. It then unites and annexes “to the *same* Earldom the *said* Earldom of Monteith, with all the liberties, privileges, and immunities to a free Earldom belonging;” thus specifying in the clearest manner that the Earldoms so annexed were the *territorial* Earldoms, because neither “liberties, privileges, nor immunities,” nor the term “free Earldom,” can possibly apply to a *personal* Dignity.

It has, however, been suggested¹, that the next clause, “and specially with the place, priority, and precedency due to the said Earl and his predecessors as Earls of Monteith, in whatsoever Parliaments, &c. before all Earls created since the said 6th day of September, 1428, which is the date of the said Charter of the aforementioned Earldom of Monteith granted by King James the First to Malise Earl of Monteith and his heirs,”

¹ Lord Advocate's Speech on the Claim to the Earldom of Airth, in 1839.

shows that the *personal* as well as the *territorial* Earldoms were united, inasmuch as *Precedency* is an incident of a *personal Honour*.

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To this suggestion it may be replied, that the grant of *Precedency* is not said to depend upon, or to be connected with, the Earldoms so united; and though introduced with the conjunction "et," followed by the word "specialiter," it is, nevertheless, *a distinct declaration*, and is in no degree dependent upon the grant of the liberties, privileges, and immunities belonging to a free, i. e. *territorial* Earldom. Moreover, the clause respecting *Precedency*, so far from being necessary, was altogether superfluous (except in case of a severance of the Dignities); for, as the grantee and his heirs were confirmed in, rather than divested of, the Earldom of Monteith, both territorial and personal, they would, of course, retain the *Precedency* belonging to that Dignity, without any express grant or declaration for the purpose. The clause seems, therefore, to be mere surplusage, unless the Earldoms became severed, in which contingency the Earls of Monteith would retain their original *Precedency*, and the Earls of Airth would take precedence after the Earls of Monteith, and before all Earls created subsequently to the 6th of September, 1427 or 1428.

That the insertion of a clause respecting *Precedency* in a Charter by which lands were erected

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into an Earldom does not necessarily affect the *personal* Dignity previously created, is shown by the case of Cassillis, as decided by the House of Lords in 1762.¹

¹ In 1642, John, sixth Earl of Cassillis, resigned the Earldom and Lordship of Cassillis, comprehending the lands specified, into the hands of the Barons of the Exchequer for a new infeftment. The Royal Charter contained a *novodamus* and erection of the lands and estate “in *unum integrum et liberum Comitatum et Dominium*, nunc, et in omni tempore, *Comitatum et Dominium de Cassills* nuncupand. per dict’ Comitē de Cassils, duran. vita sua, et post ejus decessum per præfat. Jacobum Dominum Kennedy ejus filium et hæredes suos respective antedict’ *secundum præcedentiam et prioritatem loci illis per eorum jura legesque et praxin dicti regni nostri Scotiæ debitam et competentem*, omni tempore affuturo fruen. gauden. et possiden.,” which charter was ratified by Parliament. Another resignation and charter of *novodamus* was made in 1671 (and also confirmed by Parliament), in the precise terms of the charter of 1642, which charter was thus referred to: “Quæ integræ terræ baroniæ, &c.; sunt omnes unit. prius annexat. erect. et incorporat. in unum integrum et liberum Comitatum et Dominium nuncupat. et nuncupand. omni tempore affuturo Comitatum et Dominium de Cassils, *cum titulo, dignitate, præcedentia, et prioritatem dicti. Comiti et predecessoribus suis, per leges et praxin hujus regni nostri debit. secundum cartam,*” &c., “de data penult. die Septembris, 1642.” It was contended, on the above clauses, that these Charters carried the personal Dignity; but the House of Lords held the contrary, because there was no evidence that the Honours had ever been resigned. Speaking of the clauses relating to precedency, Lord Mansfield said, “I won’t pretend to guess what the words do mean, whether to give any rank or not; but it is plain the title was not granted.” “It is not easy to know what meaning these words have.” “If these words could carry a Title of Honour, it would create strange

The concluding clauses of the Patent declare that the Earl of Monteith and his heirs shall have, hold, and enjoy the name, style, title, and dignity of Earl of Airth; "and that with the place and precedence before all other Earls," which precedency was, it states, due to them "under the said Charter to Malise Earl of Monteith of the 6th September, 1428," *but no notice whatever occurs in those important clauses respecting the annexation of the Earldom of Monteith to that of Airth.* The real and *only* object of those provisions was, apparently, to oblige the Earl to adopt the Title of AIRTH instead of MONTEITH, and to secure to him the same place and precedence as he had enjoyed as Earl of Monteith.

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It is therefore confidently submitted that the words "sicuti nos ex nostra certa scientia proprioque motu, fecimus et constituimus memoratum Willielmum Comitem de Montethe et heredes suos Comites de Airthe," together with the concluding clause, "et volumus concedimus et ordinamus quatenus prefatus Willielmus Comes de Montethe heredesque sui predicti nomen stilum titulum et dignitatem Comitum de Airthe omni

consequences." Lord Hardwicke observed, "The words *secundum præcedentiam et prioritatem loci*, and so forth, could not possibly carry the Dignity. One cannot say what these words mean."



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tempore a futuro habeant eisdemque fruantur et gaudeant idque cum loco prioritate et præsidentia ante omnes Comites iis antea debitis virtute dictæ cartæ dicto quondam Melisso Comiti de Montethe suisque prædictis præfato sexto die mensis Septembris anno Domini millesimo quadragentesimo vigesimo octavo prædicto concessa," *are the essential and operative parts of the instrument*¹, to which all others are subservient ; that the grant of the *personal* Dignity of Earl of Airth to the Earl of Monteith and *his heirs*, is *perfect* and *complete* ; and that that destination is not in any degree controuled by, nor dependent upon, the annexation of the territorial Earldom of Monteith to the territorial Earldom of Airth.

Though the form of the Patent is unprecedented, its object is free from obscurity or doubt, — namely, to create the Earl of Monteith and *his heirs*, EARLS OF AIRTH, with the design of obliterating, as it were, both the Titles of Strathern and Monteith, the confirmation of the former of which had been cancelled,

¹ These clauses in the Patent of 1633 would seem, in fact, to have the same effect as the *dispositive clause* in a Charter of lands ; on which Lord Mansfield said, " Nothing could be granted but what is contained in the dispositive clause ;" and Lord Marchmont, " It is a fixed rule of law, that nothing could be carried by the charter but what is contained in the dispositive clause."—Speeches on the Claim to the Earldom of Cassillis, in 1762.

while the latter was by this instrument to become *sopita*, or merged, in the name of the new Dignity.

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The Crown was aware that the Earl was entitled to the ancient Earldom of Strathern as *heir of line* of Prince David; and it expressly states in this Patent, that he had inherited the Earldom of Monteith, as *heir of line and succession* of Malise Earl of Monteith, under a Charter to the said Malise and *his heirs*. Circumstances having, however, rendered it expedient that the Earl should bear some other Title than that of Strathern or Monteith, he was created EARL OF AIRTH, with the *same destination* as that which the Crown had been then recently informed was *the destination of the old Earldom of Strathern*, of which he had been deprived; and which, as *the Crown states in the instrument itself*, was *also the destination of the Earldom of Monteith*, which he had inherited, and of which he was then in possession.

Whether the Crown was or was not correct in stating that the Earldom of Monteith stood destined to the *heirs* of Earl Malise, is, it is submitted, immaterial with respect to the import of the word "*heirs*," in the Patent granting the Earldom of Airth. It seems to be sufficient to show that *heirs* was nowhere used in that instrument for *heirs male*; and this fact is completely established by finding, that though the

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grantee was *heir male of the body*, as well as *heir general* of Malise Earl of Monteith, he was described, not as *heir male*, but as “*heir of line and succession*” of that personage,—words which are perfectly free from ambiguity, which *only bear one construction*, and which *leave no doubt as to the class of heirs in the mind of the framer of the Patent*—which Patent, it is most material to observe, *was revised, if not (as is nearly certain) drawn up, by the very King’s Advocate*¹, whose opinion that the grantee was entitled to the Earldom of Strathern as “*heir of line*” of Prince David, under a simple destination to “*heirs*,” was the sole cause of the creation of the Earldom of Airth.

Additional evidence that the word *heirs* was advisedly used in that Patent to mean *heirs general*, is afforded by comparing it with the Patent of July 1631, confirming the Earldom of Strathern to the Earl of Monteith. The resemblance

¹ The Jury, which found the Earl of Monteith heir of David Earl of Strathern, referred, in their defence of that proceeding, to the King’s recognition of the fact in the Patent of 1631 (APPENDIX, No. XI.), which instrument, they said, “*was dictated by His Majesty’s Advocate* ;” and the Sheriff of Edinburgh said that all the instruments for serving the Earl heir of that personage, his Renunciation, the Charter of the lands of Urechat, and the Patent of Honour were “dictated and penned by the King’s Advocate.” See Sir John Scot’s “True Relation,” APPENDIX, No. IX. pp. xlvi.—xlviii.

both in the objects and structure of the two instruments is so striking, that it is impossible not to believe that the one was formed upon the other. Both state that the Earl of Monteith had been retoured *undoubted heir of blood* to his ancestor; both recite the Charters of creation of the Title; and the design of both is, that the Earl may enjoy the Title of two Earldoms with the precedence belonging to the older Dignity. But by the Patent of 1631 (though, like that of the Earldom of Airth in 1633, it recognizes the grantee in the character of an *heir of line*) the Honour is confirmed only to *his heirs male of tailzie*, being a *new* destination, whereas it was obviously intended by the Patent of 1633, that the *new* Honours should descend to the *same heirs* as those to whom the Crown expressly states that the old Honours were destined.

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When it is remembered that a *totally different word* was adopted to express the destination of the new Earldom in that Patent, from what occurs in the Patent of 1631; that the word so substituted has a *clear and prescribed (but directly opposite) meaning*; and that that word occurs, *not once only, but repeatedly, in the same sense, and always consistently with every other part of the instrument*, it seems impossible that both terms can have the *same meaning*, i. e. that "*heirs*" in the Patent of 1633 means the *same*.

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class of heirs as is described by "*heirs male*" in the Patent of 1631.

It has, however, been contended¹ that the Earldom of Monteith stood limited to Malise, the first Earl, and the heirs *male of his body*; because the only Charter in evidence, or in existence, of the date of the 6th of September, anno 22 James I., is that by which the lands of Craynis were erected into the territorial Earldom of Monteith, with limitation to *the heirs male of his body*, and which must therefore (it has been said¹), have been the Charter referred to in the Patent of 1633; and consequently that the word *heirs* throughout the Patent of the Earldom of Airth, should be construed to mean the same heirs as are specified in the Charter of the lands of Craynis.

The arguments against such a proposition seem equally obvious and conclusive, and are founded on the contents of the Patent of the Earldom of Airth itself, and on all the facts and circumstances under which it was issued:²

¹ Vide the Lord Advocate's Speech.

² The presumption that the Earldom of Monteith was destined to *heirs general*, is greatly strengthened by the case of the Earldom of Buchan. James Stewart, uncle of King James the Third, was created Earl of Buchan between March 1466 and October 1477; but, as the Charter of creation is not extant, the limitation of the honour is unknown. On the 12th of October, 1477, he obtained a Charter, wherein he was described as "Earl of Buchan,"

I. It has been conceded¹ that the Charter of the lands of Craynis was *not the Charter* under which Earl Malise derived his *personal* Dignity of Earl of Monteith; because there is not a word therein relating to *Dignities* or *Honours*; and because, as the grantee was described in it as “Earl of Monteith,” he must have been *previously* created to that Dignity by some earlier Charter, no longer extant.

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II. The limitation in the Charter of the lands of Craynis was to Malise Earl of Monteith, and the *heirs male of his body*, with reversion to the Crown; whereas the Charter of the Earldom of Monteith, referred to and recited in the Patent of the Earldom of Airth, was to the said Earl Malise and *his heirs*.

granting him the *territorial* Earldom of Buchan, *to hold to him and the heirs male of his body lawfully procreated, whom failing, to return to the Crown*. Therefore, *in these points*, the Earldom of Buchan and the Earldom of Monteith *are exactly alike*. James Earl of Buchan was succeeded by his son and heir Alexander, second Earl; and he by his son and heir John, third Earl, on whose decease the dignity *devolved upon his daughter and heiress* Christian, Countess of Buchan. She conveyed it to her husband Robert Douglas, who was Earl of Buchan, *jure uxoris*. Their son James succeeded as Earl of Buchan; but, on his death, the Earldom *again devolved upon the heir female*, in the person of *his daughter and heiress* Mary Countess of Buchan, who married James Erskine, Earl of Buchan, *jure uxoris*.

¹ Vide the Lord Advocate's Speech.

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But if, *as is admitted*, the Charter of the lands of Craynis was not the Charter by which the Dignity of Earl of Monteith was created, it could not possibly be the Charter referred to in the Patent of 1633; because the clauses respecting precedency prove, indisputably, that the Charter mentioned in that Patent *was the Charter by which the personal Dignity had been created*.

It must again be observed that the Patent of the Earldom of Airth commences with stating that the Earldom of Monteith had been granted to Malise Earl of Monteith and *his heirs*, and that William, then Earl of Monteith, was the *heir of line and succession* of the said Malise. It erects the lands of Airth into a *free territorial* Earldom, with the Title and Dignity of Earl of Airth, in favour of the said Earl and *his heirs*, annexing thereto the *territorial* Earldom of Monteith; and it then creates the grantee and *his heirs* Earls of Airth; and in the concluding clause, those grants to the said Earl and his *aforesaid heirs* are repeated.

Thus, from the beginning to the end of the Patent, only *one class of heirs*, namely, *heirs general* or *heirs of line*, are either mentioned or contemplated. The Earldom of Monteith was not merely supposed, but is actually stated, to have been granted to *heirs*; and, though the grantee was *heir male* of the body of Malise

Earl of Monteith, it is as *heir of line and succession*, and not as *heir male*, of that personage, that the Crown considered him, when it was about to confer a new Dignity upon him and *his heirs*.

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At the time when this Patent was issued, the distinction between a limitation to "*heirs*," and a limitation to "*heirs male*," had not only been recognized and settled in practice, but the distinction between them had been brought under the deliberate consideration of the identical Law Officer of the Crown who prepared this instrument; and the circumstance occurred in the Earl of Monteith's own case, only two years before, in reference to a Dignity which was the sole cause of the Patent of 1633 having been brought into existence. Can it, then, be supposed that the word "*heirs*," which occurs, *not once or twice only*, but *repeatedly*, instead of being used in its proper technical sense, was intended to mean "*heirs male general*," or "*heirs male of the body*," when important proceedings had just before taken place, because the Earldom of Strathern, though universally considered a *male* fief, had on examination been found to belong to the *heir of line* of the grantee in 1371, under a simple destination to "*heirs*"?

Moreover, the recital of the legal status of the grantee — *heir of line* — appears to have been one of the motives for the creation of

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the Earldom of Airth; a fact which shows the sense in which the word *heirs* must have been used in the other parts of the Patent; and especially in the creative clause, where it next occurs.

In no part of the instrument is there the slightest allusion to *heirs male*, while the term *heirs* occurs no less than *seven times*:—

First, it is said that Malise Earl of Monteith and *his heirs* had obtained the Earldom of Monteith by a Charter, dated on the 6th of September, 1428.

2ndly. That William Earl of Monteith had been retoured *undoubted and lawful heir of line and succession* to the said Malise.

3rdly. The lands of Airth are erected into a territorial Earldom in favour of the grantee and *his heirs*.

4thly. The Earl of Monteith and *his heirs* are created Earls of Airth.

5thly. The Charter of 1428 is again said to have been granted to Malise Earl of Monteith and *his heirs*.

6thly. The Earl of Monteith and *his heirs aforesaid* are to have the Title of Earl of Airth.

7thly. The Charter of 1428 is, for the third time, said to have been granted to Malise Earl of Monteith and *his [heirs] aforesaid*.

If, on the first occasion, when the destination to *heirs* occurs in this Patent, there were reasons

for doubting the sense in which it was used, the true meaning of the term must be sought for in the other parts of the instrument; and had it been preceded, or followed, by the words *heirs male*, there might be some pretence for giving that construction to it. But the destination to *heirs* is immediately preceded by the description of the grantee as *heir of line* of an ancestor, who is said to have been possessed of an Earldom to him and *his heirs*; and *heirs* only are mentioned throughout the entire instrument. Had *heirs* been used for *heirs male*, it is almost certain that the former would have been interchanged, in one or more places, with the latter expression (of which there are many examples in Scottish Charters): but in this Patent there is a *constant and unvaried adhesion to "heirs;"* and the import of the word is actually illustrated, when it first occurs, by a reference to the status of the grantee as an *heir of line*, which reference would have been altogether unnecessary and inconsistent, if it had been supposed that he had inherited the Earldom of Monteith as an *heir male*, or if the term *heirs*, in the other parts of the instrument, meant *heirs male*.

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Even if the Earldom of Airth had been united to that of Monteith, in a manner which prevented the possibility of their ever being separated, and with a special clause, providing that though granted to *heirs*, the Earldom of Airth

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was nevertheless to follow the destination of Monteith, that Dignity would, it is presumed, still descend to the *heirs* of the grantee, unless a Charter of the Earldom of Monteith, containing a limitation to *heirs male*, were actually produced. *Multo fortiori*, then, must the destination to *heirs* be held to mean *heirs general*, when the Patent itself states that the Earldom of Monteith *was* limited to *heirs*; when there is no Charter of that Dignity with a contrary destination in existence; when there is no instance of an heir male having inherited the Honour to the exclusion of an *heir general*, and when the grantee of the Patent of 1633 is said to have inherited it as *heir of line*.

Every circumstance of the case also shews the probability of the Earldom of Airth having been destined to *heirs general*. The only objects of the Patent were to create a *new* Earldom in lieu of one to which the Earl of Monteith had proved his right as *heir general*, and to merge in the new Dignity the name of an old Earldom, which, as the Crown itself states, then stood destined to *heirs*, the territories of which it unites to the territories of the new Earldom.

If the territorial Earldom of Monteith was, as the Crown stated, limited to *heirs*, in what possible way could the junction of those territories to the newly erected territorial Earldom of Airth have been permanently effected, unless

they were to descend to the *same class of heirs*? It would be nothing to the purpose (even if it could be positively *proved*, instead of being merely *presumed*), that the Earldom of Monteith did, in fact, stand destined to *heirs male*. The Crown evidently supposed it to have been destined to *heirs general*, and, acting upon that supposition, it granted the Earldom of Airth also to *heirs general*. Whatever may have been the actual destination of the Earldom of Monteith, it is submitted, that the Dignity of Earl of Airth can stand on its own ground, unfettered by any previous destination of *another* Dignity, or of *other* territories; and that the terms of its limitation ought, therefore, to receive its usual and *primâ facie* technical meaning.

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Though the proper construction of the limitation of the Earldom of Airth does not depend upon what may have been the actual destination of the Earldom of Monteith, it is important to observe, that there is *no evidence* whatever to *disprove* the statement in that Patent, that the Earldom of Monteith was granted to Earl Malise and *his heirs*. It may therefore be contended,—

First, that the recital of the Charter of the Earldom of Monteith in the Patent of 1633 must be considered true and correct, until the contrary be shown *by the production of the original Charter*, or by the *enrolment* of it.

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Secondly, that in the absence of positive evidence of the incorrectness of that recital, the rights and interests of the party to whom it may be beneficial cannot be disputed by its author, the Crown, on the *mere presumption* that the statement is not consistent with the fact.

Thirdly, that supposing such recital of the destination of the Earldom of Monteith to be insufficient for the purpose of giving the *heir* of Earl Malise the Earldom of *Monteith*, it is at least fully sufficient to prevent the usual technical meaning from being torn from the destination of the Earldom of *Airth*, created by that Patent, to the grantee and *his heirs*.

It must again be observed (because the fact completely destroys the argument against giving to the word *heirs* in the Patent of the Earldom of Airth its usual meaning), that there is *no proof* whatever that the Earldom of Monteith was limited to the *heirs male* of Earl Malise; and it is confidently submitted that nothing can prevail against the statement of the Crown itself in the Patent of 1633, that it was destined to *heirs general*, except positive and conclusive evidence to the contrary.

The Charter of the lands of the Earldom of Monteith (even if the date were the same as that of the Charter alluded to), is, confessedly, *not* the instrument by which the Dignity was granted.

A territorial Earldom often stood destined to a different series of heirs from the *personal* Earldom¹; and there are many instances of a grant of Honours by one Charter, and of lands or revenues for the support of those Honours by another Charter, *both dated on the same day*.² Under these circumstances, it is the *fair*, and it certainly is the *legal*, presumption that the Crown was correct in its recital of the terms of the Charter of the Earldom of Monteith. But, supposing the Crown was mistaken, its error could not affect the right of the *heirs* to whom it granted the *Earldom of Airth*, (a *new* and *totally distinct Dignity*,) whatever might be its effect on a claim to the Earldom of Monteith.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633.

It is true that in cases of landed property and other real estates before the Court of Session,

¹ See the cases of Sutherland, Buchan, Cassillis, and numerous others.

² On the 18th of November, 4 Hen. V., 1416, Thomas Earl of Dorset was created, by patent, Duke of Exeter; and, *on the same day*, he received a *second* patent, wherein he was styled Duke of Exeter, by which 1000*l.* was granted to him for the support of the dignity; and, *on the same day*, additional revenues were assigned to him by a *third* patent. (Rot. Patent, 4 Hen. V. m. 11. and m. 13.)

On the 2nd of May, 25 Hen. VI., 1447, Sir John Beauchamp was created Baron Beauchamp of Powyke; and, *on the same day*, revenues were assigned to him for the support of the dignity by a *second* patent. (Rot. Patent, 25 Hen. VI. p. 2. m. 33.) Several other instances might be cited, in which lands or pensions were granted for the support of Honours soon after their creation.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633.

when it was necessary to ascertain who were the *heirs* really intended by the maker of a Settlement, or who was the person entitled to succeed in the character of "heir of provision," the word "*heir*" has not always retained its usual signification. But (as has been observed by the highest authority), there is no analogy between *heirs of provision*, under the destination of a private individual, claiming lands or heritages, and *heirs* under a Patent of Honour, whereby the blood of the grantee is ennobled, which has no necessary connection with the investitures of the lands from whence the Title was derived, and where the terms of the instrument itself must govern the descent.¹

In this case (supposing even that it were proved that the Earldom of Monteith was destined to *heirs male*) the instruments are *not the same*. Different lands were erected into a *different* territorial Earldom; and a *different* personal Earldom, with a *different* Title, was created in favour of an individual who had inherited *another* Earldom, as well territorial as personal.

That the annexation of those lands was not attended by any effect on the Honours, is shown by the severance (which will be again noticed) of the lands from the Dignities.

If any evidence were wanting to prove that

¹ Vide the Opinion of Lord President Blair, in a subsequent page.

it was the *territorial*, and *not* the *personal Earldoms* that were united, it would be found in the record of the reception of the Earl of Airth by the Privy Council of Scotland; and in the alienation of the territorial Earldom of Monteith from the territorial Earldom of Airth, as well as in the proposed alienation of the *personal* Dignity of Monteith from the *personal* Dignity of Airth, which will be afterwards noticed.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633.

On the 28th of March, 1633, Thomas Earl of Haddington, Lord Privy Seal, produced before the Lords of the Council, the Patent whereby his Majesty was pleased, out of remembrance of the services of William Earl of Monteith, President of the Council, “*to erect the lands and barony of Airth, pertaining heritably to the said Earl of Monteith, into a free Earldom, to be called in all time coming, the EARLDOM OF AIRTH, and to annex and unite thereunto the lands and EARLDOM OF MONTEITH, without prejudice always of the Charter of the Earldom of Monteith, granted by his Majesty’s predecessor of famous memory, King James the First, to Malise Earl of Monteith, and his heirs, unto whom the said William Earl of Monteith is undoubted heir of line and succession served and retoured, which Charter is of the date the sixth day of September, 1428 years, and in the 22nd year of the said King’s reign, likeas our said*

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633.

Sovereign Lord by his Patent aforesaid has made and constitute the said *William Earl of Monteith and his heirs Earl of Airth*, and has unite and annexed the said *Earldom of Monteith to the said Earldom of Airth*, with all the liberties, privileges, and immunities pertaining to a free *Earldom*, especially with the place, priority, and precedence due to the said Earl and his predecessors, as Earls of Monteith, in all Parliaments, conventions, public meetings, and otherwise, before all Earls whatsoever made and created since the said sixth of September, 1428, and has ordained the said Earl, and his heirs, to be called in all time coming EARLS OF AIRTH, and to bruik and enjoy the honours, dignity, and precedence due to them by virtue of the said Charter granted to the said Malise Earl of Monteith before all others.”¹

Here the Earldoms are first clearly described as *territories*, and when they are again said to be annexed to each other, they are described as the *said Earldoms*, followed by the words “with all the liberties, privileges, and immunities pertaining to a free *Earldom*.”

As the annexation of *personal Dignities* was altogether unprecedented, some doubt may be entertained of the power of the Crown to unite an ancient with a modern Peerage. Lands and Baronies, (though perhaps not territorial Ear-

¹ Printed Evidence, pp. 13, 14.

doms,) were however frequently annexed¹; and as Honours had never before been united, and as lands could certainly be, and often had been, annexed to each other, the fair presumption is, that the Earldoms united by the Patent of the Earldom of Airth were the *territorial*, and *not* the *personal* Earldoms; and therefore, whatever might be the effect of such annexation with respect to those *lands*, it could not operate to the prejudice of the *heirs general* of the grantee (so repeatedly and so clearly described) in their succession to the personal Dignity of Earl of Airth.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633.

It is material to observe, that it was the territorial Earldom of Monteith which was annexed to the territorial Earldom of Airth,—the *old* Earldom to the *new*,—and not the Earldom of Airth to that of Monteith. If, therefore, this annexation has any effect upon the previous destination of the *personal* Earldom of Monteith, and if that destination was to *heirs male* of the body of Earl Malise, it seems more reasonable that the annexation should *extend* and *enlarge* the destination of Monteith to *heirs general*, than, by divesting the limitation of the Earldom of Airth of its usual and proper technical import, control and narrow the descent of that Earldom.

¹ Thus, the lands and Barony of Drymen were annexed to the Earldom of Monteith. (Printed Evidence, p. 22.)

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633.

But, supposing that the *personal* Honours as well as the lands of Monteith and Airth were united, there is nothing in the Patent to prohibit them from being severed, or to render the enjoyment of the one, absolutely dependent upon the possession of the other. On the contrary, the clause by which the Charter of the Earldom of Monteith is protected and declared to remain in full vigour and integrity, seems rather to shew that a separation of the two Earldoms was contemplated; for such clauses were introduced into other Patents of Honours with that express object.¹

The separation thus foreseen and provided for was (as will afterwards be stated) authorised by a Royal Charter with respect to the territorial Earldoms of Monteith and Airth in less than fifty years after their annexation²; and eleven years only had elapsed before the lands of Monteith were *again* erected into an Earldom, *without any notice whatever being taken of the lands or Earldom of Airth*.

On the 11th of January, 1644, King Charles the First, proceeding on the resignation of the Earl of Airth and Monteith of various lands of the Earldom of Monteith, was pleased to newly erect and incorporate the said lands into one

¹ See the Patents of the Dukedom of Lauderdale in 1672; of the Dukedoms of Gordon and Queensberry in 1684; of the Marquisate of Atholl in 1676; and the Earldoms of Rothes in 1680, and Kinnoull in 1704.

² Vide pp. 108, 109. postea.

whole and free Earldom, to be called in all time coming “the Earldom and Lordship of Monteith,” in favour of William Earl of Airth and Monteith, Lord Graham of Kilpont and Kilbride, and Lady Agnes Gray, Countess of Airth and Monteith, his wife, and the longer liver of them, and John Lord Graham of Kilpont, their eldest son, and “the heirs male procreated between him and Lady Mary Keith his wife, whom failing, to the next lawful heirs male of the said John Lord Graham of Kilpont whomsoever.”¹

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633.

In considering the construction that ought to be given to the destination of the Earldom of Airth, it is material to inquire what were the usual limitations of Dignities granted by King Charles the First; whether a destination simply to “*heirs*” occurred in any other case; and if it did occur, what interpretation it has received?

About sixty-seven Peerages were conferred between 1625 and 1649; of which thirteen were to *heirs male of the body*; forty-two to *heirs male*; four to *heirs male whomsomever*; four to *heirs male of the body*, whom failing, to *heirs male whomsoever*; two were peculiar²; and three, viz. the Earldoms of Airth in 1633,

¹ Record of Charters in the Office of the Lord Register.

² The Table in the APPENDIX, No. XV., shews the limitations of all Scottish Peerages granted between the years 1600 and 1707.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633.

Leven in 1641¹, and Dysart in 1643, were simply to "*heirs.*" In the year in which the Earldom of Airth was created, *twenty-three* Peerages were granted; and the limitation of *every one* of those Dignities, *except of Airth*, was to the heirs *male*, either of the body or general, of the grantees. This solitary exception from the general usage, must have been *intentional*; and it would be absurd to suppose that a *totally different destination* in *one* case, from the other *twenty-two* cases, was *intended* to have *precisely the same effect*, more especially when it is known that the Patent was drawn up by the King's Advocate, under very peculiar circumstances, against the wishes of the grantee, and purposely to suit a special object of the Crown.

It can scarcely be necessary to observe that the word *heirs*, in a Patent of Peerage, must be considered to mean *heirs general*, unless there be something in the Patent itself which shows, beyond all doubt, that it was used in a more limited sense. The term "*heirs*" has a fixed

¹ The Earldom of Leven descended to the grandson and heir male (who was also the heir general of the grantee), who resigned his Honours, and obtained a new charter with a different destination of them. The Earldom of Dysart descended to the *eldest daughter* of the grantee, who became Countess of Dysart. She resigned her Honours, and obtained a charter of them to her and *her heirs*, with a still larger destination of the Dignities, and they were inherited by her *heir general*, Louisa late Countess of Dysart, who died in 1840.

and precise import ; and it is only when it is impossible that the author of a deed could, consistently with the other parts of the instrument, have intended it to bear its usual technical meaning, that it can receive any other construction.

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SEVENTH EARL
OF MONTEITH.
1633—1671.

This principle, which was clearly laid down by Lord Eldon in the Roxburghe case, has been repeatedly acted upon ; and was recently adopted on the claim to the Barony of Polwarth.¹

Applying this principle to the Patent of the Earldom of Airth, it is not to be presumed that a destination so simple, so common, so well understood, and with which every other word in the instrument is consistent, can be divested of its usual and proper meaning, upon the bare *presumption* that the Crown was mistaken in its recital of the Charter of the Earldom of Monteith, when neither that Charter nor the enrolment, nor even a copy of it, exists. One of the most simple destinations known to the law of Scotland ought not to be divested of its usual and *primâ facie* meaning, on the mere *supposition* that an instrument relating to a *totally distinct Investiture* granted by the Crown two centuries before, did not contain the destination which the Crown itself, when referring to that instrument, expressly states that it did contain.

¹ Vide the Speeches of Counsel on the Claim to the Earldom of Airth in 1839.

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633—1671.

Here it is proper to inquire, if *heirs* in the Patent of the Earldom of Airth did not mean *heirs general* of the grantee, what heirs could have been meant?

Unless *heirs general* were intended, the destination must have been to *heirs male*; but of whom? Of the body of the grantee? or of the body of Malise Graham, first Earl of Monteith? There is nothing in the Patent, or in the facts of the case, to justify the conclusion that the Earldom of Airth was to be confined to the heirs *male* of the grantee's body. Such a construction would be inconsistent with the idea that that Earldom was to follow the destination of the Earldom of Monteith, because the latter stood destined, if not to the *heirs*, at all events to the *heirs male of the body* of Earl Malise; and the only reason that has been given for divesting the word "*heirs*" in the Patent of 1633 of its usual technical meaning, is founded upon a *supposed* destination of the *personal* Earldom of Monteith, and its *supposed* annexation to the Earldom of Airth.

If *heirs* meant *heirs male*, they must therefore have been the *heirs male of the body* of *Earl Malise*; but even in the immense variety of Scottish destinations, is there any case in which a simple limitation to *heirs*, has been construed to mean the heirs *male* of the body of an ancestor who lived at the distance of seven generations, (i. e. the *proavus abavi*, or great great great great great grandfather of a grantee,) with

respect to a *distinct Investiture, and one which was never held by such ancestor?*

WILLIAM
SEVENTH EARL
OF MONTEITH.
1633—1671.

Very little has been discovered respecting the Earl of Airth between 1633 and 1641. In 1639 he certainly stood high in the King's confidence, being in secret correspondence with His Majesty on public affairs; and, apparently, receiving pay for his services.¹ In September 1641, the King proposed to the Estates of Parliament that he should be a Privy Councillor, but he was rejected.² He sat in Parliament as "Earl of Monteith" on the 25th of January 1621, in April 1629, and in August 1631³; as "Earl of Strathern" on the 22nd of September 1631, 13th of April and 2nd of September 1632⁴; and as "Earl of Airth" in August 1639, July 1644, May 1662, June 1663, and October 1669.⁵ After his creation to the Earldom of Airth, he never used the title of "Monteith," except in conjunction with the Title of "Airth." The Earl of Airth died before February, 1670-1⁶, leaving his affairs so much involved that his

¹ Vide the Letters obliging communicated by James Maidment, Esq., dated 18th June and 17th September, APPENDIX, No. XIII. pp. lxxxix.—xci.

² Balfour's Annals of Scotland, vol. iii. pp. 66. 148.

³ Acts of Parliament of Scotland, vol. iv. pp. 589. 593. 595. 672.; vol. v. pp. 3. 5. 192. 202. 204. 206. 208. 228. 231. 234. 239.

⁴ Ibid. vol. v. pp. 248. 261. 263. 271. 275.

⁵ Ibid. pp. 237. 239. 244.

⁶ Crown Charter, dated 4th of February, 1670-1. Printed Evidence, p. 19.

grandson and heir dared not take up his succession. By Agnes, daughter of Patrick Lord Gray, whom he married in 1611¹, he had, besides other issue², his eldest son,

JOHN LORD
KILPONT.

JOHN GRAHAM, commonly called LORD KILPONT³, whose fate was remarkably unfortunate. Having joined the Marquis of Montrose, in 1644, in support of the Royal cause, with four hundred men, he was present at the battle of Tippermuir, on the 1st of September following; but a few days after that event he was murdered, in the camp at the kirk of Collace, by James Stewart of Ardvoirlich.⁴ Lord Kilpont married,

¹ Printed Evidence, pp. 57, 58.

² In 1632, the Earl of Monteith had six sons living, viz.: 1. John Lord Kilpont; 2. James; 3. Robert; 4. Patrick; 5. Charles; 6. Archibald; and Anne was then described as his third, and Jane as his fourth daughter.

³ Crown Charter, 4th of February, 1670-1, and Procuratory of Resignation, 11th of April, 1632. Printed Evidence, pp. 14. 19.

⁴ Wishart's Memoirs of the Marquis of Montrose, pp. 41, 42. 49, 50. Records of Parliament. Printed Evidence, p. 18. Guthrie's Memoirs, pp. 165, 166. Sir Walter Scott having, in the "Legend of Montrose," made Lord Kilpont (whom he represents as "Earl of Monteith") one of the heroes of the Tale, he received an interesting communication from Robert Stewart of Ardvoirlich, Esq., the descendant of James Stewart, giving a much more favourable account of his ancestor's conduct respecting the murder of that nobleman than occurs in Wishart's Memoirs. Sir Walter Scott inserted Mr. Stewart's communication in the last edition of his Novels; and, that it may find a place in an historical work, it will be found in the APPENDIX, No. XVI.

about April, 1632, Lady Mary Keith, eldest daughter of William Earl Marischal¹, by whom he had one son, WILLIAM, and two daughters, Mary and Elizabeth.²

WILLIAM GRAHAM, SECOND EARL OF AIRTH and EIGHTH EARL OF MONTEITH, succeeded his grandfather in those Honours about February, 1670-1³; and on the 4th of that month he obtained a Charter from the Crown of various lands in favour of himself and his heirs male and assigns.⁴

WILLIAM
EIGHTH EARL
OF MONTEITH
AND SECOND
EARL OF
AIRTH.
1671—1680.

He sat in Parliament as Earl of Airth in July 1670, June 1672, November 1673, July 1681, and April 1685⁵; but after the abdication of the House of Stewart, he resumed the Title of Mon-

¹ Procuratory of Resignation of William Earl of Strathern and Monteith, with the consent of Dame Agnes Gray Countess of Strathern and Monteith, his spouse, in consideration of "a matrimonial contract made between John Lord Graham of Kilpont, our eldest lawful son," and William Earl Marshal, Dame Mary Erskine Countess Marshal, his spouse, and Lady Mary Keith, their eldest lawful daughter; "anent the marriage now contracted, and shortly to be solemnized, between the said John Lord Graham of Kilpont and the said Lady Mary Keith," dated the 11th of April, 1632; and a Crown Charter, dated the 1st of April, 1633. Printed Evidence, pp. 14, 15, 16.

² Crown Charter to John Lord Graham of Kilpont and Lady Mary Keith his wife, and William Graham their eldest son, dated the 8th of January, 1644. Printed Evidence, p. 17.

³ Crown Charter, 4th of February, 1670-1. Printed Evidence, p. 19.

⁴ Records of Charters.

⁵ Acts of Parliament of Scotland, vol. viii. pp. 3. 55. 451.; and Appendix 1. 10. 26.

WILLIAM
EIGHTH EARL
OF MONTEITH
AND SECOND
EARL OF
AIRTH.
1671—1680.

TEITH, and sat in Parliament as “Earl of Monteith” in April 1693.¹

In May, 1680, the Earl of Airth, having become greatly involved in debts, wished to resign his territorial Earldoms of Monteith and Airth, together with the Style, Title of Honour, and Dignity of Earl of Monteith and Airth, Lord Kilpont and Kilbride, with all honours, precedencies, liberties, and privileges pertaining thereto in any sort², and to obtain a new Charter regranting both the lands and Honours to himself for life, with remainder to James Marquis of Montrose (the Chief of the House of Graham), and the heirs male of his body, whom failing, to his heirs male whatsoever, whom failing, to his heirs and assigns whatsoever, in fee, unless the Earl of Monteith should happen to have an heir male of his body; in which case the said lands, living, estate, and title of Honour foresaid, should be redeemable by the said heir male, from the Marquis of Montrose and his heirs, upon payment of one angel of gold or ten marks of Scots money.³

A Warrant to the Signet was accordingly signed by the King for a new Charter to be passed under the Great Seal; but in the report from the Privy Council of Scotland, the resignation of the Earl of Monteith is said to be in favour of the second son of the Marquis of

¹ Printed Evidence, p. 31.

² Ibid. pp. 20, 21.

³ Ibid. p. 20. 22.

Montrose¹: “and when he exists your Majesty wills and declares that he shall bruik, use, and enjoy the Title of Honour and Dignity of Earl of Monteith and Airth, Lord Kilpont and Kilbride, with all precedencies, honours, arms, and dignity thereof, and promises in *verbo Principis*, to grant Patent of Honour to him, with all clauses needful, and to ratify the same” in the next Parliament.

WILLIAM
EIGHTH EARL
OF MONTEITH
AND SECOND
EARL OF
AIRTH.
1681.

But, His Majesty having been advised not to allow the Dignities to be alienated from the Earl of Monteith and the heirs to whom they stood destined, these proceedings were not carried into effect. On the 20th of May, 1680, a Letter to the Exchequer was signed by the King, stating that he had signed a Signature of the same date as that Letter, in favour of the Marquis of Montrose, “concerning his own estate and Titles of Honour, and the estate and Titles of Honour of William Earl of Monteith and Airth;” and though His Majesty had “no objection against the late disposition made by the said Earl to the said Marquis, in so far as it concerns the Earl’s estate, and the pertinents thereof,” yet, “We being unwilling to alter the settled course of succession of the Titles of Honour of the Earl of Monteith and Airth, and others contained in his Patent,” it was His Majesty’s pleasure, that at the passing of the said Signature, the Barons of the Exchequer should delete the clauses relating to the disposing of the said Earl’s

¹ Printed Evidence, p. 24.

WILLIAM
EIGHTH EARL
OF MONTEITH
AND SECOND
EARL OF
AIRTH.
1681.

Titles of Honour, "to the end they may remain in the same state which they were in before the said late disposition."

In the original Signature, not only are all the passages respecting Honours accordingly crossed over, shewing that they were cancelled, but *every passage relating to the territorial Earldom of Airth is likewise deleted*¹, notwithstanding the King's intimation that he had "no objection against the Earl's disposition of his estate," but was, on the contrary, desirous that the same may "be made effectual according to the tenor thereof."² Whether this reservation of the lands of Airth was made pursuant to new directions from the King, or from any other cause, has not been ascertained.

A Charter of the whole and entire Earldom of Monteith³ soon after passed the Great Seal, in the terms of the Signature, after it had been corrected pursuant to the King's Letter⁴; and

¹ Except in one place (Printed Evidence, p. 21. l. 3. from the bottom); but it was evidently there retained by mistake.

² Printed Evidence, p. 25.

³ "Omnes et singulas terras aliaque subscript. viz. totum et integrum Comitatum de Monteith." The only lands not included were those of Kilpont, which were incumbered with debts; and of Unshennochs, which were of inconsiderable value.

⁴ Vide Printed Evidence, p. 21. The charter is dated at Windsor Castle, on the 2nd of May, 1680, though the King's Letter, in conformity with which it was drawn up, was dated on the 20th of that month. The true date of the charter was probably the 2nd of June, 1680.

that settlement was ratified in Parliament on the 6th September, 1681.¹

This proceeding clearly shews that a *severance* of the territorial Earldoms of Monteith and Airth, and also a severance of the personal from the territorial Earldoms, was not only admitted by the law advisers of the Crown to be possible, but that it was authorized by a Royal Charter; for even if the *heirs* mentioned in the Patent of 1633 were the *heirs male* collateral of the grantee, the Dignities would, on the death of William second Earl of Airth without issue male, have devolved upon a very distant relation, descended from a younger son of Alexander second Earl of Monteith, and who would thus have become Earl of Monteith and Airth, without one acre of the territorial Earldom of Monteith.

WILLIAM
EIGHTH EARL
OF MONTEITH
AND SECOND
EARL OF
AIRTH.
1681.

There would consequently have been a severance of the territorial Earldoms in violation of the Patent of 1633; and if the Dignities had depended upon the possession and union of those territories, or if the *personal* Earldom of Airth was so identified with the *territorial* Earldom of Monteith that it could neither have a separate existence, nor descend according to the usual technical meaning of its destination, it is difficult to understand how it could survive that severance in the

¹ Acts of Parliament of Scotland, vol. viii. p. 254.

WILLIAM
EIGHTH EARL
OF MONTEITH
AND SECOND
EARL OF
AIRTH.
1681.

manner sanctioned by the Crown, when it refused to alter the settled course of succession of the Titles of Honour, though it permitted the lands to be severed.

It is, however, very remarkable that, on the 6th of September, 1681, when this Settlement was confirmed by Parliament, the Earl of Monteith should have protested against the ratification, on the ground that it had been expressly provided by the bond of tailzie between him and the Marquis of Montrose, that the Title of Honour, Dignity, and Estate of the Earldom of Monteith should never be separated, and that the families of Montrose and Monteith should never be joined or confounded in one another, together with several other conditions which the Marquis had not performed. It is also remarkable, that in this Protest *the Earldom of Airth is not even mentioned*; but the Earldoms, both territorial and personal, of Monteith, are alluded to as if (as was no doubt then considered the fact) they were wholly independent of those of Airth.

This proceeding is thus recorded: — “The Earl of Monteith and Airth protested that the foresaid ratification in favours of the Marquis of Montrose of the Earldom of Monteith should noways prejudice the said Earl his right, seeing by the bond of tailzie betwixt the said Marquis of Montrose and him, it is expressly provided that the Title

of Honour, Dignity, and Estate thereof should never be divided nor separated, neither that the families of Montrose and Monteith should be joined or confounded in [one] another, with several other conditions on the said Marquis his part mentioned in the said bond of tailzie, never as yet performed by him; and therefore protested that the said Earl being in plain Parliament when the said ratification passed in the said Marquis his favours might noways prejudice the said Earl of Monteith, nor infer any homologation or acquiescing on the said Earl his part to the said Marquis his ratification of the said Earldom and estate of Monteith.”¹

WILLIAM
EIGHTH EARL
OF MONTEITH
AND SECOND
EARL OF
AIRTH.
1681.

The Earl of Monteith's motive for protesting against this Settlement seems to have been his dislike to the possible alienation of the lands of Monteith from the Title of Monteith, which would have been the effect of the King's interposition, and his unwillingness that either the Dignity or the territories should be merged in the Marquisate of Montrose. It was clearly his design that a new branch of the House of Graham should, after his decease, be ennobled in the person of a younger son of its Chief; and the manner in which his intention was frustrated, and the Dignity divested of all means for its support, is another of the many curious incidents in which its history abounds.

¹ Acts of Parliament of Scotland, vol. viii. p. 257.

WILLIAM
EIGHTH EARL
OF MONTEITH
AND SECOND
EARL OF
AIRTH.
1681.

The Earl of Monteith was twice married. His first wife was Anne Hewes¹, whom he accused of adultery; and, after much recrimination and some remarkable proceedings², obtained a divorce from her in 1684. The Earl married, secondly, Katherine second daughter of Thomas Bruce of Blairhall in Perthshire, who died before him.³ The Earl of Monteith died on the 12th of September, 1694⁴, and was interred in the family burial place in the Isle of Inchmahome, in the Loch of Monteith.⁵

Dying without legitimate issue, the heirs of William eighth Earl of Monteith and second Earl of Airth were his sister MARY, who, on the 8th of October, 1662, married SIR JOHN ALLARDICE of Allardice in Kincardineshire⁶; and his nephew,

¹ Printed Evidence, p. 58.

² These proceedings are reported in Sir John Lauder, Lord Fountainhall's "Decisions of the Lords of Council and Session, from June 6. 1678, to July 30. 1712," vol. i. pp. 248. 255. 257. 291. 298. 308. It is said in Wood's Douglas' Peerage (vol. i. p. 40.), that the Earl of Monteith married Katherine Bruce on the 4th of April, 1685.

³ Printed Evidence, p. 58.

⁴ Testament dative of William Earl of Monteith, &c., given up by Sir John Graham of Gartmore, Baronet, "one of the heirs portioners of line" of the deceased Earl. (Printed Evidence, pp. 43—46.)

⁵ Printed Evidence, p. 58.

⁶ Articles of Marriage, dated 26th of September, 1662, and Register of the Parish of Arbuthnott. (Printed Evidence, pp. 32. 68.) No record has been found, which would be received as evidence, wherein Mary Lady Allardice is

SIR JOHN GRAHAM of Gartmore, Baronet, son and heir of Sir William Graham, by Elizabeth the Earl's other sister, whose descendants will be afterwards noticed.¹

LADY MARY ALLARDICE, from the misfortunes of her family, was educated by her grand- LADY MARY
ALLARDICE.
1662—1720.

described as the *eldest* sister of Elizabeth Lady Graham. In a memorandum of notes for counsel's opinion in 1694, "The Laird of Allardice" is however expressly called "*the eldest sister's son*;" but, on being tendered as evidence on the claim to the Earldom of Airth, the Lords' Committees for Privileges refused to admit it, "because there appeared to be no adoption by the family, there being no evidence of its being in the hand-writing of any member of the family, or of its having been laid before counsel." (Printed Evidence, p. 46.; and see the Claimant's printed Case, pp. 11, 12.) As all the descendants of Elizabeth Lady Graham were *proved* to be *extinct*, the point is no longer of importance; but it may be observed, that parole testimony of the fact, derived from family tradition, was received (vide Printed Evidence, pp. 9. 11. 76, 77.); that similar parole evidence was given on the retour of Mrs. Barclay Allardice, as eldest heir portioner of William Earl of Monteith, in October, 1784, by members of the Graham family (vide Printed Evidence, pp. 58—62.); and that it is strongly corroborated by her having borne her mother's-mother's baptismal name; by her having been married before her sister; by her brother the Earl of Monteith having given the Barony of Kilpont to her son; and by the statements of contemporary writers, namely, Crawford and Douglas, in their Peerages of Scotland; and Nisbett, in his System of Heraldry.

¹ Vide p. 160. *et seq.*, postea.

mother, the Countess Mareschal, at Fetteresso. She married Sir John Allardice of Allardice, by whom she had two sons, John¹ and George.¹ Lady Mary Allardice, who survived both her sons, always asserted her right to be Countess of Strathern. She was buried on the 2nd of December, 1720.²

JOHN ALLARDICE, Esq.
1690.

JOHN ALLARDICE of Allardice, Esq., her eldest son, was baptized on the 6th of August, 1667¹, married, on the 28th of October, 1690, Elizabeth, daughter of William Barclay of Balmakewan³, and died, without issue, in December 1690⁴, leaving his estate charged with a jointure to his widow. His brother,

SIR GEORGE ALLARDICE.
1697—1709.

SIR GEORGE ALLARDICE, became his heir.⁵ He was baptized on the 27th of August, 1672⁶,

¹ Parish Register of Arbuthnott. (Printed Evidence, p. 69.) Crown Charter, granted in May, 1671. (Ibid. p. 34.) Will of Sir John Allardice, dated 27th of January, 1676. (Ibid. p. 35.) Original Discharge, &c., dated 14th of November, 1690. (Ibid. p. 37.)

² Parish Register of Arbuthnott. (Ibid. p. 69.)

³ Original Contract of Marriage, dated 17th of October, 1690. (Ibid. p. 36.) Register of the Parish of Arbuthnott. (Ibid. p. 69.)

⁴ Original Discharge by Elizabeth his widow, dated 9th of April, 1691. (Ibid. p. 98.)

⁵ Original Discharge, dated 9th of April, 1691. (Ibid. p. 38.) Retour of George Allardice, Esq., as heir to his father, 14th of October, 1697. (Ibid. p. 38.)

⁶ Parish Register of Arbuthnott. (Ibid. pp. 69, 70.)

and was retoured heir to his father on the 14th of October, 1697.¹ By a disposition in 1693, William Earl of Monteith and Airth, "for the love, favour, and affection" which he bore to Sir George Allardice of Allardice, Knight and Baronet, his "nevoye," assigned to him and his heirs the reversion of the lands and barony of Kilpont.² He was about the Court of Queen Anne, by whom he was appointed Master of the Mint in Scotland. Sir George Allardice died in October, 1709³, leaving his affairs very much embarrassed. By Lady Anne Ogilvie⁴, daughter of James Earl of Findlater, who survived him, (and was for many years the *third* widow who, at the same time, had a jointure or charge on the family estate,) he had issue,

JAMES ALLARDICE of Allardice, Esq., his son and heir, then sixteen years old. He was baptized on the 25th of July, 1693⁵, and married, about May, 1720, Mary, daughter of Robert Milne, of Balwyllie⁶, Provost of Mont-

JAMES ALLARDICE, ESQ.
1709—1728.

¹ Retour, 14th of October, 1697. (Printed Evidence, p. 38.)

² Printed Evidence, p. 39.

³ Parish Register of Arbutnott. (Ibid. pp. 69, 70.)

⁴ Crown Charter, granted 27th of July, 1719. (Ibid. p. 47.)

⁵ Ibid.

⁶ Marriage Contract, dated 21st of May, 1720. (Printed Evidence, p. 67.)

rose. A letter from Mr. Patrick Scott to his mother, dated at Edinburgh, 2nd November, 1709, shews that his right to the Earldom of Monteith was then well known. Speaking of the pecuniary difficulties of the family, Mr. Scott says, "I think your son's clame and right to the Title of Monteith should be a good argument why the Queen should take care of and provide for him."¹ Dying in May 1728², in his thirty-fifth year, the Claim was not prosecuted. He left issue,

JAMES ALLARDICE,
Esq.
1728—1765.

JAMES ALLARDICE of Allardice, Esq., his only son and heir.³ He was born on the 29th, and baptized on the 30th of January, 1727⁴; and on succeeding to the family estate, which was greatly encumbered, he was only two years old. Mr. Allardice did not become of age until 1748, and lived mostly abroad. Though universally considered to be entitled to the Earldom of Monteith, he alleged his embarrassed circumstances as his reason for not assuming the Title, and proving his right to that Dignity. He married, in March 1756, Ann, daughter of James Barclay of London⁵, who died in child-birth in the follow-

¹ Original Letter in the possession of the Claimant. See APPENDIX, No. XVII.

² Parish Register of Arbuthnott. (Printed Evidence, pp. 69, 70.)

³ Crown Charter, dated 26th of July, 1748. (Ibid. p. 48.)

⁴ Parish Register of Arbuthnott. (Ibid. pp. 69, 70.)

⁵ Marriage Contract, dated 30th of March, and 7th of April, 1756. (Ibid. p. 49.)

ing year. Mr. Allardice died in July 1765¹, leaving

SARAH ANN ALLARDICE, his daughter and sole heiress², who was born in 1757, and was under nine years of age at her father's death. She married, in December 1776, Robert Barclay of Ury, in Kincardineshire, Esq.³, who assumed the name of Allardice. On the 26th of February, 1785, Mrs. Barclay Allardice was served and retoured eldest nearest lawful heir portioner in general of William the last Earl of Airth and Monteith, brother of her great great grandmother.⁴ In September 1793, she was divorced from her husband⁵; and married, secondly, on the 5th of August, 1795, John Nudd⁶, and died in July 1833⁷, leaving

MRS. BARCLAY
ALLARDICE.
1733—1765.

ROBERT BARCLAY ALLARDICE, Esq. of Allardice and Ury, her son and heir⁸, THE PRESENT

ROBERT BAR-
CLAY ALLAR-
DICE, ESQ. THE
CLAIMANT.

¹ Parish Register of Arbuthnott. (Printed Evidence, pp. 69, 70.)

² Crown Charter, dated 3rd of July, 1777. (Ibid. p. 60.)

³ Decreet of Divorce, registered in the Commissary Court of Edinburgh, vol. xxi. The Postnuptial Contract is dated 9th of June, 1780. (Ibid. pp. 50, 51.)

⁴ Printed Evidence, pp. 52—63.

⁵ Decreet of Divorce.

⁶ Register of the Parish of Christchurch, in Surry (Ibid. p. 71.); and parole testimony. (Ibid. pp. 8. 71.)

⁷ Parole testimony (Ibid. pp. 8. 11.); and Retour, dated 9th of November, 1833. (Ibid. p. 66.) She was buried at Sprowston in Norfolk.

⁸ Retour, dated 17th of December, 1799. (Ibid. p. 65.) Retour, dated 9th of November, 1833. (Ibid. p. 66.); and Crown Charter, dated 2nd of June, 1800. (Ibid. pp. 71, 72.)

CLAIMANT OF THE EARLDOM OF STRATHERN, as *sole heir* of the body of David Earl of Strathern, son of King Robert the Second; of the EARLDOM OF MONTEITH, as sole heir general of the body of Malise Graham, who was created to that Dignity about the year 1427; and of the EARLDOM OF AIRTH, as sole heir of the body of William seventh Earl of Monteith, who was created Earl of Airth, to hold to him and *his heirs*, by King Charles the First, in the year 1633.

ACCOUNT OF THE DESCENDANTS OF LADY ELIZABETH GRAHAM, YOUNGER SISTER OF WILLIAM EIGHTH EARL OF MONTEITH AND SECOND EARL OF AIRTH.

ELIZABETH GRAHAM, younger of the two sisters of William the last Earl of Airth and Monteith, married, in December 1663, Sir William Graham of Gartmore, Baronet¹, and died before April 1672 (in her brother's lifetime), leaving a daughter, Mary², and her son and heir,

DESCENDANTS
OF LADY ELI-
ZABETH GRA-
HAM.

SIR JOHN GRAHAM, of Gartmore, Baronet, to whom, on the 20th of October, 1693, William Earl of Monteith conveyed, by the description of his "nevoye," the lands of Unshannochs.³ He was retoured heir to his father (who died in December, 1694), on the 12th of February, 1695⁴; and was decerned executor creditor to his uncle, the Earl of Monteith, on the 21st of the same month, when he was described as one of his heirs portioners of line.⁵ Sir John

¹ Contract of Marriage, dated 19th of December, 1663. (Printed Evidence, p. 33.)

² Crown Charter, dated 30th of April, 1672. (Ibid. p. 78.)

³ Disposition. (Ibid. p. 41.)

⁴ Retour, 12th of February, 1695. (Ibid. p. 79.)

⁵ Testament dative of William Earl of Monteith, &c. (Ibid. pp. 43. 45.)

DESCENDANTS
OF LADY ELI-
ZABETH GRA-
HAM.

Graham died in July 1708, without issue.¹ His sister,

MARY GRAHAM, the only daughter of Lady Elizabeth Graham, married James Hodge of Gladsmuir.² She is said to have died about 1689 or 1690³, and was certainly dead in July 1708.² Her only child,

MARY HODGE², who was born about 1688³, married, before October 1708, her cousin William Graham, younger son of Walter Graham of Gallingad.⁴ In November 1708, she was served next and lawful heir of line to her uncle, Sir John Graham of Gartmore², and was confirmed executrix dative to him in January 1713.⁵ She died before May 1740⁶, leaving two sons, James⁶ and William⁶; and three daughters, Grizel⁶, Mary⁶, and Margaret.⁶ Her eldest son,

JAMES GRAHAM, was born in September 1705, and was living in 1708, but died, without issue, before May 1740⁵, leaving

¹ Retour of 4th of November, 1708. (Printed Evidence, p. 80.)

² Family Letters. (Ibid. pp. 123. 130.)

³ Heritable Bond, executed 7th of October, 1708. (Ibid. p. 81.) Retour of 4th of November, 1708. (Ibid. p. 80.)

⁴ Record of the Commissariat Court of Hamilton and Campsie, 29th of January, 1713. (Ibid. p. 82.)

⁵ Discharge and Renunciation of William Graham, dated 24th of May, 1740. (Ibid. p. 83.)

⁶ Ibid. p. 83. Bill for Letters of Supplement, dated 15th of May, 1742. (Ibid. p. 84.) Bond, dated 19th of June, 1741; and Assignation, dated 18th of August, 1746. (Ibid. pp. 85, 86.)

WILLIAM GRAHAM, his brother and heir.¹ He styled himself EARL OF MONTEITH, as early as the year 1744², on the presumption that his great grandmother, Lady Elizabeth Graham, was the *eldest* sister of William Earl of Monteith and Airth, and that the Earldom of Monteith stood destined to *heirs general*. He voted as "Earl of Monteith" at the election of Peers of Scotland in October 1744; August 1747; March 1749; July 1752; November 1752; and on the 5th

DESCENDANTS
OF LADY ELI-
ZABETH GRA-
HAM.

¹ Discharge and Renunciation by William Graham, 24th May, 1740. (Printed Evidence, p. 83.)

² It is proper to observe, that in the Return of the Lords of Session in Scotland, dated 27th of February, 1740, to an Order of the House of Lords of the 12th of June, 1739, "to make up a roll or list of the Peers of Scotland at the time of the Union, whose Peerages are still continuing," they reported, that "in the record of the Great Seal in the Lord Register's keeping there is a patent by King Charles I., granting the dignity of Earl of Monteith and Strathern, anno 1631, to William Earl of Strathern, and to his heirs male and of tailzie; that they find no charter altering this limitation; that the Earl of Monteith appears to have sat in the Parliament of Scotland anno 1693, but not since that time; and that no person has, by himself or proxy, or by a signed list, attempted to give any vote since the Union, as Earl of Monteith, on any election of a Peer or Peers, to sit in Parliament; but whether any heirs male or of tailzie of the said William Earl of Strathern or Monteith do now exist, or whether the limitation of the succession of that Peerage was altered by any new patent, or by any charter on the resignation of the original patentee, or his successors, they cannot discover." (Proceedings relating to the Peerage of Scotland, from January 16. 1707 to April 29. 1788, collected and arranged by William Robertson, Esq. 4to. Edinb. 1790, p. 206.)

DESCENDANTS
OF LADY ELI-
ZABETH GRA-
HAM.

of May, 1761.¹ His assumption of the Dignity was however prohibited by an Order of the House of Lords, of the 2nd of March, 1762, he having failed to appear before the Lords' Committees for Privileges on the 1st of that month, pursuant to an Order of the House made on the 27th of January preceding, to shew by what authority and upon what grounds he took upon himself that Title.²

Although he was reduced to great distress, he never relinquished the Title of Earl of Monteith, and died, without issue, on the 30th of June, 1783.³

The fate of this person exhibits in a striking manner the vicissitudes of fortune. Though undoubtedly one of the heirs of the body of a Prince of the Blood Royal of Scotland, and the immediate descendant of a powerful Peer, whose claim to the honours of that Prince, in the year 1631, was considered dangerous to the rights of the reigning Family, he lived in his latter years upon charity, and died a wanderer, by the way-side.⁴ His eldest sister,

¹ Printed Evidence, pp. 88, 89, 90.

² Lords' Journals. (Printed Evidence, pp. 90, 91.)

³ Letters from his Relations. (Ibid. p. 119.) Bill of Expenses of his Funeral. (Ibid. p. 145.) Parole testimony of a person who saw his corpse. (Ibid. p. 147.) Retour of 7th of April, 1838. (Ibid. p. 101.)

⁴ Printed Evidence, p. 144.

GRIZEL GRAHAM, was born in February, 1707, and died unmarried on the 12th of June, 1774.¹ The youngest sister of William Graham,

DESCENDANTS
OF LADY ELI-
ZABETH GRA-
HAM.

MARGARET GRAHAM, married John Colquhoun of Edinburgh, goldsmith², and died, without issue, on the 18th or 19th of February, 1782.³ The other sister,

MARY GRAHAM, married John Bogle, an officer of excise at Kirkcudbright⁴, and died at Kirkcudbright on the 20th of January, 1779⁵, having had by him (who died on the 17th of February, 1787⁶) three children, John, Mary, and Grizel.⁷ Her only son,

JOHN BOGLE, became a portrait painter in

¹ Original Letters of the Family. (Printed Evidence, pp. 106, 107. 124.)

² Original Letters of the Family. (Ibid. pp. 106. 124. 126.) Original Pedigree of the Family, given in evidence. (Ibid. p. 127.)

³ Original Letters of the Family. (Ibid. pp. 106. 124. 126.) Pedigree of the Family. (Ibid. p. 148.); and Retours of 11th of January, 1805. (Ibid. p. 100.); and 7th of April, 1838. (Ibid. p. 101.)

⁴ Bill for Letters of Supplement, dated 15th of July, 1742, and Assignment, &c. (Ibid. pp. 84, 85.) Original Letters of the Family. (Ibid. pp. 106. *et seq.* 119, 120.) Pedigree of the Family. (Ibid. p. 126.)

⁵ Letter from her husband to their son, giving an account of her death, dated January 25th, 1779. (Ibid. p. 125.)

⁶ Family Letters. (Ibid. p. 111.)

⁷ Family Letters, &c. (Ibid. pp. 112. *et passim* to p. 140.) Parole testimony. (Ibid. pp. 96, 97.) Family Pedigree, pp. 116. 127.

DESCENDANTS
OF LADY ELI-
ZABETH GRA-
HAM.

Edinburgh, and afterwards in London.¹ He married, on the 7th of August, 1769, Marion only daughter of James Wilson², (who survived her husband until 1823³), and died, without issue, in Edinburgh, in 1803.⁴ Of his two sisters,

GRIZEL BOGLE died at Edinburgh, unmarried, before the 15th of April, 1802.⁵ Her only surviving sister,

MARY BOGLE, was served heir to her great great grandfather, Sir William Graham of Gartmore, in January, 1805⁶; and after the death of her mother, she was considered and acted as the *sole representative and last survivor of her family*.⁷ Miss Mary Bogle died at Edinburgh, unmarried,

¹ Parole testimony. (Printed Evidence, p. 96.)

² Pedigree of the Family. (Ibid. pp. 116. 127.)

³ Parole testimony. (Ibid. pp. 96, 97. 105.)

⁴ His Will, dated 9th of December, 1786, and proved 28th of July, 1803. (Ibid. p. 98.) Parole testimony. (Ibid. pp. 96, 97.) Retours of 11th of January, 1805, and 7th of April, 1838. (Ibid. pp. 99. 101.)

⁵ Original Discharge, dated 15th and 16th of April, 1802, of money due to Miss Grizel Bogle deceased, and received by her sister Mary Bogle. (Ibid. p. 94.) Retours of 11th of January, 1805, and 7th of April, 1838. (Ibid. pp. 99. 101.)

⁶ Retour, 11th of January, 1805. (Ibid. p. 100.) Bond of Annuity, dated 27th and 29th of August, 1821. (Ibid. p. 128.)

⁷ Various original Letters. (Ibid. pp. 129—140.) Parole testimony. (Ibid. pp. 141, 142.)

on the 12th of November, 1821¹, when all the descendants of Lady Elizabeth Graham became extinct¹; and the *sole representation* of David Earl of Strathern, of Malise Earl of Monteith, of William seventh Earl of Monteith and first Earl of Airth, as well as of his grandson, William eighth Earl of Monteith and second Earl of Airth, vested in ROBERT BARCLAY ALLARDICE of Ury and Allardice, Esquire, as *heir general* of Lady Mary Graham.

DESCENDANTS
OF LADY ELI-
ZABETH GRA-
HAM.

STATE OF THE FAMILY, AND PROCEEDINGS
RESPECTING THE HONOURS, BETWEEN 1694
AND 1839.

At the death of William last Earl of Monteith and Airth, in 1694, his *heirs of line* were his sister MARY LADY ALLARDICE and his nephew SIR JOHN GRAHAM of Gartmore, Baronet; and his *heir male* is said to have been JAMES GRAHAM of Gartur, Esquire, the lineal descendant of William Graham, second son of Alexander second Earl of Monteith.²

STATE OF THE
FAMILY.
1694—1839.

If the Earldom of Monteith had been limited

¹ Parole testimony. (Printed Evidence, pp. 94. 141.)
Retour of 7th of April, 1838. (Ibid. p. 101.)

² Wood's Douglas' Peerage of Scotland, vol. ii. p. 474.

STATE OF THE
FAMILY.
1694—1839.

to the heirs *male* of the body of Malise Earl of Monteith, the right of the collateral heir male of the last Earl would have been clear; but though the person who then assumed to be *his heir male* was in a respectable station of life¹, it does not appear that he ever asserted his pretensions to the Dignity; *nor has a Claim ever been preferred to it by an individual in the character of heir male.*

Right to the
Honours as-
serted by Lady
Mary Allardice.

On the other hand, it has been proved that Lady Mary Allardice, the eldest sister of the last Earl, supposed herself entitled to the Honours of her family, spoke of her right to be "Countess of Strathern," of which she thought she had been unjustly deprived²; and her grandson, Mr. James Allardice (who died in 1728), was universally considered to be entitled to the Earldom of Monteith, he having been "often drank to as Earl of Monteith."³ The state of the Allardice family fully explains why their right to that Dignity was not vindicated by legal proceedings. Lady Mary's son died in her lifetime, leaving his heir a minor, who died in 1728 (eight years only after his grandmother), at the age of thirty-five. His son was then an infant, and did not be-

¹ Wood's Douglas' Peerage of Scotland, vol. ii. p. 474.

² Family tradition.

³ Statement of John Erskine, Esq., of Dun, in 1784. MS. Collections in the possession of Hudson Gurney, Esq. "Book, No. I. f. 21."

come of age till 1748. At that time, and long previously, the affairs of his family were much embarrassed, and he died at the age of thirty-eight, leaving his only child, a daughter, then an infant, who eventually adopted the necessary measures for asserting her right to the Honours of her ancestors.

STATE OF THE
FAMILY.
1700—1783.

The Title of Earl of Monteith was assumed, and the right incidental to the Dignity, of voting at the election of representative Peers, frequently exercised by William Graham, the heir of the other sister (however mistaken he may have been as to the seniority of her birth) as *heir of line*, from 1744 until his death in 1783; and it was not until 1762 (only three years before the death of the contemporary representative of Lady Mary Graham, the elder sister) that the House of Lords prohibited him from calling himself Earl of Monteith.

Title assumed
by William
Graham.
1744—1783.

With respect to the EARLDOM OF AIRTH, however, the case is very different, for it was scarcely possible that a Claim could have been made to it before the year 1785, when measures were taken for the purpose.

The Allardice family seem scarcely to have thought of the Earldom of AIRTH, but always asserted their right to that of MONTEITH, the Patent of Airth not being upon record, nor any copy of it being known to exist. In 1783,



STATE OF THE
FAMILY.
1783.

however, the original Patent of the Earldom of Airth was discovered in the Charter chest of the Duke of Montrose, it having come into the possession of his ancestor on the death of the last Earl in 1694, under the following circumstances.

On the death of the Earl of Monteith and Airth, the Marchioness of Montrose (widow of the Marquis on whom the reversion of the territorial Earldom of Monteith was settled in 1680), with others on behalf of her son, who was then a minor, forcibly carried off the whole of the Monteith Charter chest, "under silence of night," from the house of one Brown, the custodier.¹

Until 1783, therefore, none of the persons who, as *heirs* of William first Earl of Airth, were entitled to the Dignity, ever saw the Patent, or could possibly have been cognizant of its terms. But no sooner was the instrument brought to light, than proceedings were instituted by Mrs. Barclay Allardice, as eldest heir portioner of the grantee.

PROCEEDINGS
ADOPTED IN
1784.

Case submitted
for opinion of
Counsel.
1781.

In January, 1784, a Memorial, with all the Documents, was laid before Robert Blair (afterwards the distinguished Lord President of the Court of Session), for his opinion on the terms

¹ This fact is shewn by a memorial of the Laird of Allardice in 1694, now in the Allardice charter chest. (F. 40.)

and destinations of the Patent of 1633, creating William Earl of Monteith Earl of Airth, and “whether the Memorialist, as the lineal descendant of Lady Mary Graham, was not entitled to succeed to the Peerage of Airth.”

PROCEEDINGS
ADOPTED IN
1784.

Opinion of Mr.
(afterwards
Lord President)
Blair.
1784.

Mr. Blair, after expressing some doubt whether at an early period a grant *hæredibus suis*, necessarily meant a destination to heirs general, observed, —

“But long before the reign of Charles the First, destinations to heirs male *per expressum* were well known in practice, and were commonly inserted in Deeds where it was meant that the subject thereof should not descend according to the settled course of lineal succession; and according to the law language of Scotland in 1633, I must understand, that a grant from the Crown to a person *et hæredibus suis*, was *per se* equivalent, as it would be held at present, to a grant in favour of him and his heirs *general*, or his *heirs whatsoever*.

“It must be observed, however, that in the construction, at least, of Title Deeds relative to landed property, although the expressions *hæredibus suis*, unaffected by any other circumstance, would be held to mean *heirs of line*, yet neither these expressions, nor *hæredibus quibuscunque*, are so precisely fixed down to this meaning, but that they may, without impropriety, be em-

PROCEEDINGS
ADOPTED IN
1784.

Opinion of Mr.
(afterwards
Lord President)
Blair.
1784.

ployed to denote any other set of heirs, — *heirs male*, or *heirs of a marriage*, — and have often been so construed by the Court, where the circumstances were such as to prove that a particular set of heirs, different from those of line, were in view. It is probable that this latitude of construction would not be admitted in the case of a Patent of Honour, which has no necessary connection with the investitures of the lands from whence the Title has been assumed, and which ought to be judged of by its own express tenor, and by that only.”

Adverting to a possible variation between the Charter of the Earldom of Monteith and the recital of that Charter in the Patent of Airth, Mr. Blair said, —

“ Supposing the destination of the Earldom of Monteith, in the preamble of the Patent, to have been intentionally expressed in different terms from the real destination, or from whatever cause the misrepresentation may have proceeded, I do not apprehend this could anyways affect the validity of the Patent, *quoad* the Peerage of Airth; and in the question upon the construction of the Patent, it would tend to support the memorialist’s claim, by shewing how much, in the days of Charles the First, ‘ *hæredes sui* ’ were understood to be different from *heirs male*.”

About that time, all the documents and facts of the case were also submitted to James Burnett, the celebrated Lord Monboddo, then one of the Lords of Session, who, in a letter to Mr. Barclay, the Claimant's husband, dated at Edinburgh, on the 20th of July, 1784, expressed himself in strong terms respecting her right to the Earldom of Airth :

PROCEEDINGS
ADOPTED IN
1784.

Opinion of
Lord Mon-
boddo.
1784.

“DEAR SIR,

“Mr. Anthony Barclay has put into my hands a very large collection of materials concerning Mrs. Barclay's Peerage, and I am of opinion that her best claim is not for the Peerage of Monteith, but of Airth, which was created by Charles the First, and is clearly descendible to heirs of line. A grant of the Peerage of Monteith by James the First to Malise, is, indeed, mentioned in the same Charter, and that grant is said to be likewise to heirs of line ; but that grant is nowhere to be found ; and we are sure that King James, when he took from Malise the Earldom of Strathern, gave him in return, the Earldom of Monteith, but only to his heirs male.¹ The Charter of erection is said to be in the possession of the Duke of Montrose. I should therefore think it improper for you to found your claim upon a Charter only narrated in another

¹ For the reasons before assigned this seems very doubtful.

PROCEEDINGS
ADOPTED IN
1784-1785.

Opinion of
Lord Mon-
boddo.
1784.

Charter, and which it is likely is falsely narrated. But your claim to the Peerage of Airth, I think, is indisputable, if you can prove the fact that Mrs. Barclay is descended of Mary the eldest sister of the Earl of Monteith and Airth. For this there is very probable evidence stated in your memorial, though not from the records: but as your whole claim turns upon that fact, all further proof that can be got should be adduced, and therefore I have told Mr. Anthony Barclay, that he should bring on the service as soon as possible, and examine the old witnesses mentioned in the Memorial."

Measures were immediately taken for serving Mrs. Barclay Allardice as eldest heir portioner of William last Earl of Airth, and she was accordingly so retoured on the 26th of February, 1785.¹

Considerable research was however necessary, before the proofs were sufficiently completed to bring the Claim to the Earldom of Airth before the House of Lords; and, in the meantime, those domestic circumstances occurred which led to the Claimant's divorce in 1793, and put a stop to the proceedings which had been commenced. Mrs. Barclay died in July 1833; and proceedings were immediately taken by her son, Mr. Robert Barclay Allardice, for bringing forward his Claim to the Earldom.

¹ Printed Evidence, pp. 54 - 63.

In 1834, he presented the following Petition to His late Majesty :—

Mr. Barclay
Allardice's
Petition.
1834.

“ TO THE KING’S MOST EXCELLENT MAJESTY.

“ The humble Petition of ROBERT BARCLAY
ALLARDICE of Ury and Allardice,
Esquire,

“ SHEWETH,

“ That His Majesty King Charles the First, by letters patent under the Great Seal of Scotland, dated at Whitehall, on the 21st day of January, one thousand six hundred and thirty-three, and sealed at Edinburgh on the twenty-eighth day of March thereafter, was pleased, from His Majesty’s gracious regard to the pre-eminent public services of William (seventh) Earl of Monteith, President of His Majesty’s Secret Council, to erect the lands and barony of Airth, in favour of the said William Earl of Monteith and his heirs, into a free Earldom, to be called the Earldom of Airth; and did accordingly make and constitute the said William and his heirs, Earls of Airth, with all the liberties, privileges, and immunities pertaining to a free Earldom; and did expressly grant and ordain, that the said William Earl of Monteith and his heirs, should use and enjoy the name, style, and dignity of Earls of Airth in all time coming.”

“ In granting to the Earl of Monteith this

Mr. Barclay
Allardice's
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1834.

new and additional Honour and Title, it appears to have been His Majesty's pleasure, and to have been carefully guarded and provided, that it should not be held to affect or derogate from the rank and precedency in the Scottish peerage, which had previously belonged to the Earldom of Monteith. In that view it is set forth, in the letters patent, that in the year one thousand four hundred and twenty-eight, and in the twenty-second year of his reign, King James the First of Scotland had, by a charter under his great seal, granted to Malise Earl of Monteith and his heirs, certain lands thereby erected into a free Earldom, to be called the Earldom of Monteith, to whom the aforesaid William Earl of Monteith had been served and retoured undoubted heir of line and succession; and in reference to this statement, it is expressly set forth and declared, that the newly created Earldom of Airth shall be united and annexed to the said Earldom of Monteith, with the place, priority, and precedence already belonging to the present Earl and his predecessors, in all Parliaments and public conventions of the Estates, in virtue of the above-mentioned charter of King James the First, dated in the year 1428.

“Subsequently to the date of these letters patent, Earl William continued to use and enjoy the honours and style of Earl of Airth and Monteith till his death. His eldest son and heir

apparent, John Lord Graham of Kilpont, had predeceased his father in the year 1644, leaving one son, William, and two daughters, Lady Mary, and Lady Elizabeth Graham.

Mr. Barclay
Allardice's
Petition.
1834.

“ William second Earl of Airth and eighth Earl of Monteith succeeded his grandfather, and died, without issue, in the year 1694.

“ Under the destination in the letters patent of the Earldom of Airth, in favour of the heirs general of his grandfather, he was succeeded in the honours and dignity of that Earldom by his sister, Lady Mary Graham, eldest daughter of John Lord Kilpont, who, in the year 1662, married Sir John Allardice of Allardice, and who deceased in the year 1720, leaving as her heir and representative, James Allardice of Allardice, eldest son and heir of her second son, George Allardice of Allardice.

“ James Allardice died in the year 1728, and was succeeded by his only son, James Allardice of Allardice, who died in the year 1757, leaving an only child and heiress, Sarah Anne Allardice, who, in the year 1776, married Robert Barclay of Urie, Esquire.

“ After the demise of William second Earl of Airth, his sister and representative, Lady Mary Allardice and her descendants, had forborne (not certainly from any doubt of their own legal rights, but from the occurrence of various family circumstances, and from a succession of minorities)

Mr. Barclay
Allardice's
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to lay claim to the Honours and Dignities granted to their ancestor the first Earl of Airth and his heirs. But in the year 1784, Mrs. Sarah Anne Barclay Allardice adopted the regular course of procedure for establishing her claims, and, under a brieve from Chancery, was served and retoured 'nearest and lawful heir portioner in general to the deceased William last (second) Earl of Airth and Monteith, her great great grand uncle.

"Mrs. Barclay Allardice remarried John Nudd, gentleman, and having died in the month of July 1833, has been succeeded by her eldest son and representative, Robert Barclay Allardice, your Majesty's Petitioner, who has been served and retoured lawful heir in general of his mother, and to whom consequently are destined, as heir general and of line of William first Earl of Airth, the Honour, Dignity, and Title conferred on his ancestor by the Letters Patent of 1633, above referred to.

"Your Petitioner therefore humbly prays your Most Excellent Majesty, that it may be adjudged and declared that your Petitioner is entitled to the Honour and Dignity of the Earldom of Airth.

"And your Petitioner shall ever pray.

"ROBERT BARCLAY ALLARDICE."

This Petition was referred to the House of Lords on the 2nd of June, 1834, and by the House to the Lords' Committees for Privileges.

Referred to
the House
of Lords.
June 1834.

In conformity with the Standing Orders, a Printed Case was laid upon their Lordships' table, together with an Appendix of the Evidence; and subsequently a second Appendix of Evidence was printed, containing the proofs of the extinction of the descendants of Lady Elizabeth Graham, younger sister of William last Earl of Airth and Monteith.

Another Claimant to the Earldom of Airth and the Earldom of Monteith came forward in the person of SIR WILLIAM SCOTT of Ancrum, Baronet, who presented a Petition to His Majesty in May 1838, which, after stating that Malise Earl of Strathern had been created Earl of Monteith, with limitation to his *heirs male*, and that the Dignity had descended to William seventh Earl of Monteith, who was created Earl of Airth, recited his pedigree, and asserted that under the destination in the Patent of 1633, in favour of heirs general, those Dignities had been inherited by Sir John Graham of Gartmore, son of Lady Elizabeth, eldest daughter of John Lord Kilpont, from whom they had descended to William Graham, who assumed the Title of Earl of Monteith in 1744, but that the direct descendants of Lady Elizabeth Graham having become extinct, the succession opened to the

CLAIM OF SIR
WILLIAM SCOTT
BARONET.
May 1838.

His Petition.

SIR WILLIAM
SCOTT'S CLAIM.
May 1838.

His Petition.

representative of the said William Graham, who had called himself Earl of Monteith in 1744, and had died without issue. The Petition then noticed Mr. Barclay Allardice's Claim, and denied that he was descended from the *eldest* sister of William last Earl of Monteith. It then stated, that by the failure of "the direct descendants of Mary, the sister of Sir John Graham, the son of Lady Elizabeth, the right of succession to the title of Airth and Monteith opened to the line of the said Walter Graham of Gallingad, their uncle, the younger brother of Sir William Graham," husband of the said Lady Elizabeth Graham, and that the Petitioner was the heir of line of the said Walter Graham of Gallingad. The Petition then proceeded in these words: "That your Petitioner is thus the lineal representative of Walter Graham of Gallingad, and through him of Walter Graham's grandson, William Graham, the only son of the marriage of William Graham, the said Walter's son, and Mary Hodge, the granddaughter of Lady Elizabeth, and he has been served heir in general of the said William Graham; and as such, by the rights of representation, whereby the heir is vested with the claims, rights, and privileges of his predecessor, he is the party to whom are destined, as heir general of William first Earl of Airth and Monteith, the Honour and Dignity and Title conferred on his ancestor by the Letters Patent of 1633, above referred to.

Further, that by various Charters granted by King Robert the Second to his son David Earl of Strathern, that Title and Honour is designated to David and his heirs, and the Petitioner, as representative of the said William Graham, is the party in whom is vested the representation of the Earldom of Strathern.

SIR WILLIAM
SCOTT'S CLAIM.
May 1838.

His Petition.

“That Malise third Earl of Strathern and first Earl of Monteith had, besides Alexander father of the second Earl, and who predeceased his father, a second son, Sir John Graham of Kilbride, called John with the Bright Sword, who was succeeded by his son Thomas, who was succeeded by his son John Graham, who was succeeded by his son William Graham, who was succeeded by his son John Graham, who was succeeded by his son William, afterwards Sir William Graham, who married Lady Elizabeth Graham, and whose son Sir John died without issue, as already explained.

“Sir John Graham was succeeded by his cousin-german, Robert Graham, son of Walter Graham of Gallingad, the brother of Sir William. The Petitioner, as thus shewn, is the lineal representative of Sir John Graham of Kilbride, second son of Malise first Earl of Monteith: thence that the different lines of the family are concentrated in his person.

“It will thus appear to your Most Excellent Majesty, that the Petitioner is the party to whom

are destined the Titles and Dignities of the Earldoms of Airth and Monteith.”

SIR WILLIAM
SCOTT'S CLAIM,
being without
any foundation,
was abandoned.

Sir William Scott's Petition was referred, on the 6th of May, to the House of Lords ; but he took no further measures on the subject, and was understood to have abandoned his Claim, which was manifestly without the slightest foundation, inasmuch as he was neither heir, nor heir of line, of any one of the grantees of the Earldoms of Strathern, Monteith, or Airth.

PROCEEDINGS BEFORE THE LORDS' COMMITTEES
FOR PRIVILEGES.

On the 9th of July, 1839, Mr. Barclay Allardice's Claim to the Earldom of Airth was heard before the LORDS' COMMITTEES FOR PRIVILEGES, when Mr. Knight Bruce, one of Her Majesty's Counsel, (now the second Vice Chancellor,) and Sir Harris Nicolas, attended as Counsel for the Petitioner; and the Attorney General (Sir John, now Lord Campbell) and the Lord Advocate (Andrew Rutherford, Esq.) appeared on behalf of the Crown.

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The Petition having been read, Mr. Knight Bruce proceeded to address the Committee.

Mr. Knight Bruce. — “ My Lords, I have the honour of appearing before you as Counsel in support of the Claim of Robert Barclay Allardice to the Earldom of Airth, the consideration of which Claim has been referred by Her Majesty to the House of Lords.

Speech of Mr.
Knight Bruce.

“ The Honour which is Claimed by Mr. Barclay Allardice was created by a Patent, granted by King Charles the First on the 28th of March, 1633.

[Mr. Knight Bruce then read the Patent, and

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described the Claimant's descent as heir general of the grantee. He then noticed Sir William Scott's Claim, and pointed out its total want of foundation.]

“ Upon the Pedigree I believe your Lordships will find no difficulty whatever ; and I think, with great deference, you will find as little difficulty upon the question of law, if, indeed, there can be said to be a question of law. I am not aware that any question will be made upon the law. It is my duty, however, to refer to every thing which occurs to me as being at all likely to be introduced into the case.

“ It seems not irrelevant to go into the history of this Patent, because your Lordships would naturally inquire how it happened that a nobleman, already possessing a much more ancient Title, dating from the early part of the fifteenth century — the Earldom of Monteith — should have received another Peerage — the Earldom of Airth. It may be proper to state to your Lordships the reasons ; and for that purpose it will be necessary to go back to a very early period of Scottish history. I shall now allude to what is matter of history, and matter notorious to all readers of it.

“ Robert the Second, King of Scotland, the first monarch of the Stewart family, had children by two ladies. He had a numerous family, but for the present purpose it is suf-

ficient to mention only two of them. The eldest was John, who afterwards assumed the name of Robert, and succeeded his father in the Crown of Scotland, as Robert the Third; and from him the present Royal Family descends. He was the eldest in birth; his mother was Elizabeth Muir. Robert the Second was also married to Euphemia, daughter of the Earl of Ross. By her he had also children, the eldest of whom was David Earl of Strathern. It was long a contested point among Scottish antiquarians and historians, which, or whether both families, were the legitimate issue of Robert the Second. There seems little or no doubt of the fact, that the King married Euphemia, daughter of the Earl of Ross. There is no doubt, also, that this Lady Euphemia received and held the rank of Queen. It has been said, also, that after the death of Euphemia, a marriage was solemnized between the King and Elizabeth Muir, the mother of the elder children.

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“Of late years, there was discovered by Mr. Andrew Stewart, at the Vatican, a dispensation for a marriage between the King and Elizabeth Muir, who was related to him in blood within the degrees prohibited by the Roman Church, which, if it was followed by a marriage about the time, would indicate that a marriage had taken place before the marriage with Eu-

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phemia, which fact, however, does not seem to have been known at the time, or adverted to for many years afterwards ; and it was long, as I have already said, and as your Lordships know, a disputed point — what was the exact position of these several children of the King ? In fact, however, the issue of Elizabeth Muir, the elder family, succeeded, and maintained in them and their descendants a title to the Scottish Throne, which was never seriously contested.

“ The circumstances of the case, however, and the existence of the issue of Queen Euphemia, always created a degree of heart-burning and jealousy upon the subject ; and in the reign of the First James it was a pretext for rebellions and risings, and, in fact, a pretext for the assassination of that monarch.

“ I have said that the eldest son of Queen Euphemia was David Earl of Strathern. There can be no doubt that the Earldom of Strathern was granted to him and his heirs general. Wherever that grant is spoken of, it is mentioned as a grant of that description, and I believe the fact is unquestionable. David Earl of Strathern had an only child, a daughter, Euphemia ; and inasmuch as the Earldom, which had very extensive territorial possessions, being one of the richest Earldoms in Scotland, was descendible to the heirs female, she enjoyed it.

She married Sir Patrick Graham, a cadet of the Graham family, who, in her right, was designated "Earl of Strathern;" and of that marriage there was at least one son, Malise Earl of Strathern, who succeeded his mother in her title and estates. When a minor, however, he was sent to England, as one of the hostages for the ransom of King James the First, who was detained many years in this country. A ransom was demanded when he was sent back to Scotland, after his father's death, and several of the nobility of Scotland were kept in England as his hostages. Among those was his cousin Malise Earl of Strathern, the son of Sir Patrick Graham by the Countess Euphemia.

"During his absence, partly, it is probable, from the reasons I have alluded to, and partly from the desire that the First James so strongly felt, and so frequently acted on, of diminishing the power of the great nobility, the Earldom of Strathern, with all its territories, was by Parliament unjustly seized into the King's hands and annexed to the Crown, while Earl Malise was in England, a hostage for the King, and in his minority. As some compensation, however, for this act of injustice, certain lands and estates, of much less value and consequence, and a new Earldom, were granted to Malise, who, thus deprived of the hereditary Earldom of Strathern,

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with the rich estates belonging to it, was created Earl of Monteith. The Charter, creating that Earldom, cannot be found. It appears to have been dated in the year 1427 or 1428. We have what is called the territorial Charter, the Charter of the landed estates, which were granted to this nobleman; and that Charter, which will be laid before your Lordships, grants the lands to him and the heirs male—not *general*, not collateral, but the heirs male of his body to be begotten. The King, probably being desirous to give as restricted a grant as he could of those possessions, conferred the lands in the manner I have described. The Earldom of Monteith, as I have stated, appears to have been granted by a different Charter, of which we know nothing, except as it is recited in the Charter of the Earldom of Airth; and from that recital it appears that the Earldom of Monteith, that is, the Dignity, was granted to the heirs general, as it is probable that it would be, inasmuch as the Earldom of Strathern had been granted in the same way, and it was as a substitute for that Dignity of Strathern that the Title of Monteith was granted, in reality, as a compensation—though an inadequate compensation—for the Earldom of Strathern.

“The Earldom of Monteith remained in the descendants of Earl Malise, in the male line, for several generations; but there was no disunion of the heirship male from the heirship general

between the time of Earl Malise, who thus received that Dignity in the early part of the fifteenth century, and the time of his heir male lineal and heir general, William seventh Earl of Monteith, well known in Scottish history in the time of Charles the First. At that period William Earl of Monteith enjoyed the Title and the family estates as heir general and heir male, being also enfeoffed heir general of David Earl of Strathern, of his daughter Euphemia and her husband, and of their son Earl Malise, who had been deprived of the ancient Earldom of Strathern.

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“ William Earl of Monteith was, during great part of his life, in favour with Charles the First, and of considerable use to that monarch in Scotland. He held various offices: he was President of the Council, and Justice General of Scotland. In the height of his favour, the Earl would appear to have formed the design of restoring himself to the ancient Dignity of his family, and of acquiring also such of the estates as had been long before seized by the Crown, partly granted out, and partly retained, and to have desired to avail himself of his political position for that purpose. The King appears to have given his assent to this wish, but under the reservation — that no proceedings of that nature should be so extended or carried on as to question the title of the Crown to those portions

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of the landed estates which the Crown still retained. Subject to that condition, subject to not interfering with the Crown property, the King appears to have been willing that Lord Monteith should assert such title as he could to the heirship of Earl David, the original Earl of Strathern, and make that title good, if he could, as against any of his Majesty's lieges who, by grants from his Majesty's predecessors, might have acquired part of the lands of Strathern. The King seems to have thought, or to have been advised, that the Earl might eventually make his claim good against those who had acquired some of the ancient rights of his family. Accordingly, the usual proceedings were taken for the purpose of serving the Earl heir general of David Earl of Strathern, of his son-in-law Sir Patrick Graham, and of his son Earl Malise Graham. These proceedings are preserved, and they will be in evidence before your Lordships.

“ This matter seems to have created considerable alarm, as well it might, among those subjects of His Majesty in Scotland who mediately or immediately had obtained possession by grant from the Crown of portions of the estates which had belonged to the old Earldom of Strathern. Probably in part from that motive, and in part from jealousy of the Earl's power and influence, an intrigue appears to have been formed, as

well as we can collect from the memoirs and histories of that day, to bring matters under the attention of the King, with a particular view to the observation that by means of the Earl having served himself heir to Earl David, he might, in fact, lay claim to the Crown of Scotland ; because, if the issue of Elizabeth Muir were not legitimate, then, beyond question, the right to the Scottish Crown was in the descendants of David Earl of Strathern, and, therefore, in his lineal heir male and heir general, William Earl of Monteith.

“ This intrigue appears to have been carried on with considerable skill and perseverance, and ultimately the affair was brought under the immediate attention of the King ; and that view of the case appears, as far as we can collect, then first to have struck His Majesty’s mind, and to have led him to consider that it might not be so convenient for him either to acknowledge the marriage with Euphemia Ross, or to recognise a powerful Earl of the day as standing in the same position in which Earl David would have stood if he had been then alive. Accordingly proceedings were taken, part of which remain on record, of a nature somewhat irregular, for Lord Traquair, the King’s treasurer depute, appears to have been both employed in promoting the proceedings, and one of the Judges on the bench during a part of the proceedings. The services of the Earl as heir general of the first Earl of Strathern and his

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son-in-law and grandson were, without any cause whatever, as far as we can judge, annulled. One main cause, as far as we can collect from the memoirs of the time, was the boldness of the Earl in placing himself in a position of equality in blood with His Majesty, particularly as care had been taken to communicate to Charles the First that the Earl had said ‘his was the reddest blood in Scotland.’

“Those services were annulled, and a new Patent of the Earldom of Strathern, which the Earl appears to have obtained from the King, was recalled; and in lieu of this, and as some compensation for what the King had thus caused to be undone, the whole having been done with his advised or unadvised approbation in the first instance, the Earldom of Airth now in question was granted.

“The Patent of this Earldom recites the Charter of the honours of Monteith: — “*Sciatis quia nos compertum habentes quod quondam Jacobus Primus Rex Scotorum prædecessor noster illustrissimæ memoriæ per suam cartam sub ipsius magno sigillo de data sexto die mensis Septembris anno Domini Millessimo quadringentesimo vigesimo octavo, et anno Regni sui, vigesimo secundo, dedit concessit, erexit, et disposuit quondam fideli et prædilecto suo consanguineo Melisso Comiti de Montethe, et hæredibus suis, totas et integras terras infra Montethe indicta carta mentiona-*

tas et easdem erexit in totum et integrum liberum Comitatum omni tempore affuturo Comitatum de Montethe nuncupandum, prout in dicta carta de data prædicta latius continentur; cuiquidem quondam Melisso Comiti de Montethe confisus et prædilectus noster consanguineus et consiliarius Willielmus Comes de Montethe nostri secreto consilii præses, indubitatus et legitimus hæres lineæ at successionis deservitus et retornatus existit, et nos animo nostro recolentes,"—and so on, acknowledging the heirship to Earl Malise, but avoiding a recognition of the connection between Earl Malise and the Crown; and accordingly, the Patent of Monteith being recited, the Earldom of Airth is then granted to him and his heirs general in the manner I have already read to your Lordships.

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"The Earldom was enjoyed under this Patent. His son died in his lifetime. It was enjoyed by his grandson William, who will be proved to have sat frequently in Parliament as "Earl of Airth," and was sometimes called "Earl of Monteith," until the year 1694. Since that period there have been particular reasons why the Claim has not been brought forward; for what reason the Title was not assumed or used at that early period does not exactly appear, but it may partly be accounted for in this manner. It appears that the last Earl, having no male heirs of his own body, disposed of his landed estates

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in three portions. He appears to have settled that which I collect to have been the smallest portion on the family of his younger sister Elizabeth; and he settled another portion on the family of his elder sister Mary; but the greater portion he thought fit to continue in the male line of his family, and accordingly made an arrangement with the Chief of his House, then Marquis of Montrose, by which the landed estates of Monteith were, upon his decease, to devolve upon the Marquis of Montrose; and I believe that the descendants of the Marquis of Montrose now possess those landed estates in consequence of that grant.

“It appears highly probable that upon that occasion all the Charters and muniments belonging to Earl William were taken possession of on the part of the Montrose family, who thus succeeded to the principal part of the territorial possessions of this branch, and with them must have been taken the Charter of the Earldom of Airth, the Charter in question. I have already stated to your Lordships that the Charter of the Earldom of Monteith is not forthcoming; and that the territorial Charter of the lands of Monteith was to the Earl of Monteith and the heirs male of his body; and upon the death of Earl William, who died in 1694, the family being considerably reduced in wealth, as well as position, by the mode in which he had disposed of

his estates, and other circumstances, they appear to have been in an entire state of ignorance of this Charter of the Earldom of Airth, and every thing relating to it, until of late years. It is probable that they did not advert to the Earldom of Monteith, because the only direct evidence we now have of the creation of that Dignity is the recital of it contained in the Patent of the Earldom of Airth, which must have been taken away by the agents of the Montrose family at that period.

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“ Some forty or fifty years ago, the Patent of the Earldom of Airth was discovered in the muniment room of the Montrose family, and it was then communicated to Mrs. Barclay Allardice, the mother of the present Claimant, she being then the representative of Lady Mary Graham (the wife of Sir John Allardice and eldest sister of Earl William). Upon that communication being made, proceedings were taken to obtain the service of Mrs. Allardice as heir general of William Earl of Monteith. But particular family circumstances, needless here to be entered into, though they are in a degree alluded to in the papers before your Lordships, prevented the Claim being followed up. The Lady who then represented the family died in the year 1833, and immediately after her death, her son presented the Petition which is now before your Lordships.

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“ I have ventured to trouble your Lordships with this particular statement with regard to the Earldom, for this reason, that it has been suggested that it is intended to submit, that in the patent of 1633, to William Earl of Monteith and his heirs, the words “*hæredes suos*” may by possibility be read as “*heirs male*.” I have had considerable doubt whether upon a point that, speaking with great humility, appears to me very plain and clear, I ought to address your Lordships at all ; for it seemed to me that I should be considered as raising a difficulty where none existed, and as uselessly occupying your time with a discussion of a very obvious point.

“ It appeared to me upon the whole, considering the tribunal I have to address, that I might very well leave it to your Lordships to discover for yourselves whether there is anything in the point or not. I may however, perhaps, best discharge my duty by shortly adverting to that argument, on the supposition that it will be used ; at the same time, begging your Lordships to understand me as disclaiming any notion on my part that the argument is at all sustainable.

“ I understand the supposed or expected argument is this : that whereas the territorial Charter of the lands of Monteith appears to have been to the heirs male of the body of Earl Malise, the words “*hæredes suos*” in this Patent of Airth, might, by possibility, receive the same

construction. Upon what grounds, my Lords, this can be said, I really am at a loss to conjecture. I have already stated, that with regard to the grant of the Dignity of Monteith we know nothing — we can find nothing — though the greatest search has been made after a Patent, or after evidence of it, except the recital in this Patent of the Earldom of Airth, where the words are “Comitem de Monteith et hæredes suos,” not limiting it, therefore, to heirs male, but heirs general, collateral as well as lineal. How, in such a case, the particular terms of the territorial Charter can be brought in and engrafted upon this, I am at a loss to conjecture. The great probability is, that the Earldom of Monteith was given in terms correspondent with the Earldom of Strathern, which we know to have been to heirs general, and that the reasons which induced King James the First to limit the grant of the lands with which he endowed the new Earldom to heirs male of the body of Earl Malise, would not have extended to the Dignity. He might have desired to grant the land from the Crown in as restricted a manner as possible; but the same reasons obviously would not extend to the Dignity, which, as it was given in lieu of a more early endowed and more powerful Earldom, would be granted, no doubt, to the same series of heirs to which that Dignity belonged. Nor is there any necessary connection, nor was there in the

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early and more strictly feudal times of Scotland, between the grant of lands which formed the endowment of the Earldom, and the Earldom itself, as a Dignity.

“ Your Lordships are aware of the ample discussion which that particular point received in the claim made a few years ago by the late Duchess-Countess of Sutherland to the Earldom of Sutherland, a most keenly contested case, upon which this House was advised by Lord Mansfield and Lord Camden, in two speeches of great ability, full copies of which exist. It was a very peculiar feature in that case, that the advisers of the Countess (the successful Claimant) had put her Claim upon the supposed territorial nature of the Dignity, and had founded her title to the Dignity upon grants of the lands, certain infeoffments of the lands on which she claimed. That ground was, however, disposed of adversely to Lady Elizabeth, by the judgment of this House, acting upon the advice of Lord Mansfield and Lord Camden in the two able speeches to which I have alluded. The same consideration disposed of the Claim of her principal opponent, Sir Robert Gordon, who also claimed under certain territorial charters; but her title to the Dignity of Sutherland, which she afterwards enjoyed during her life, was maintained upon the ground that the facts that had occurred during a long series of years in the

family with respect to the Peerage, proved to the satisfaction of the House that the grant must originally have been to heirs general; the result of the evidence as to the nature of the non-existing grant, a grant of which no direct evidence existed, was, that the Earldom was descendible to heirs general.

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“Mr. Spottiswoode, one of the agents upon the present occasion, is of the family of the late Mr. Spottiswoode, who was one of the agents in the Sutherland Case, to which I have referred; and he has the shorthand writer’s notes of the speeches of Lord Mansfield and Lord Camden upon that occasion. Lord Mansfield goes at very great length into the subject, showing the erroneous nature of the conceptions which had prevailed among certain Scottish lawyers and antiquaries of the connection between the lands of an Earldom and the Dignity, showing that there was no such connection, and concluding by a series of resolutions founded upon that opinion. Lord Mansfield closed his speech to the house in these words:—‘I am now satisfied no inconvenience can arise from the negative of this hypothesis. It only supports the presumption of male succession. I thought it proper to mention this selection. But if your Lordships are anyways doubtful, you would choose to hear counsel upon it. I would propose to your Lordships to come to an opinion; First,

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That the title, honour, and dignity of the Earldom of Sutherland descended to Elizabeth the wife of Adam Gordon, upon the death of her brother John Earl of Sutherland, without issue, in 1514, as heir of the body of William, who was Earl of Sutherland in 1275, was assumed by the husband in her right, and from her descended to the heirs male, who were also heirs of her body, down to the death of the last Earl of Sutherland in 1766, without any objection on the part of the male heir of the said William. Secondly, that none of the Charters produced affected the title, honour, and dignity of the Earl of Sutherland, but operate as conveyances of the estate only. Thirdly, that the Claimant, Elizabeth Sutherland, has a right to the title, honour, and dignity of the Earldom of Sutherland, as heir of the body of William, who was Earl of Sutherland in 1275.'

“ After Lord Mansfield had concluded, Lord Camden addressed the house, and among other things expressed himself thus : — ‘ When this question was moved upon the first day appointed for hearing, I was terrified with the appearance of it, and would have withdrawn myself from attending it. But after hearing the counsel answer some questions that were then put to them by the noble Lord who has now spoke, I soon discovered the whole would be reduced to short point when cleared of all the rubbish

that has been thrown upon it. In fact, it now appears to me to be one of the clearest cases I ever met with. This is a mere question of fact. Much time and labour have been bestowed to show whether Peerages descended to males only, so as to exclude females, or whether females could take by descent. Many instances of descent of Peerages have been stated, and all the instruments relating to these are only to prove that fact. Two opposite hypotheses and systems have been set up by the parties : both are erroneous. With respect to the descent of this Dignity, the first Charter in point of time insisted upon by Lady Elizabeth is only an erection of the lands into a regality, and could not operate into a transmission of the Dignity. The next Charter, in 1455, contains a grant of the 'Comitatum, hæredibus suis,' without any express description of the Honours, upon this idea, that then, and much later, all Dignities were territorial ; that a grant of the Lordship or Earldom always carried the title of Honour. This is the foundation of her Claim. The Counsel have laid down that Peerages were territorial in 1455, in order to show that many Peerages on that account went along with the land estates to males in preference to females : they were under a necessity to give that answer to the instances stated, and to insist that the Charter of the lands passed the Dignity. The

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idea of territorial Dignities applied in this way has carried Lady Elizabeth's counsel too far. They have even carried it to 1601, without considering that there is a Charter of the Earldom of Sutherland in that year, which by this rule would carry the Dignity to Sir Robert Gordon. This shows that counsel, in supporting an hypothesis, do not always consider what consequences may follow. If Lady Elizabeth's counsel had seen that this would have overturned her claim, they would have changed their doctrine. It is impossible to give any answer to what the noble Lord has stated upon this point. If the charter of Boyd in 1591 carried the Dignity, it must be very difficult to give a solid reason why the Charter of Sutherland a few years after should not operate to the same effect. Your Lordships are much obliged to the noble Lord for the great attention he has given and the great trouble he has taken in establishing the legal rules to govern the descent of Peerages. According to these rules future cases will be determined, and I am sure they are such as your Lordships will now, as I myself do, most heartily concur in. If they are adopted, the decision will be clear: whenever the case occurs again, it will be understood to be proceeded upon the same principle as the case of Cassillis. It will likewise be considered as an established point that no Charter of the Earldom

or Lordship, without specifying the Dignity, shall be understood to carry the Title of Honour after what has now been said with respect to the charter in 1601. It is certain that in very old times the grant of the Barony itself carried the dignity. But Peerages as now enjoyed are totally different. So long as territorial law took place, a conveyance of the Lordship or Barony conveyed the Dignity. They needed only look to the lands, and the Dignity followed of course. But when the territory and Dignity divided, when the Crown created Peerages without regard to estates, from that time no instrument regarding the lands could affect the Dignity.'

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"Without troubling your Lordships with reading the rest of this judgment, which contains much important matter in illustration of that which I have already cited, it is sufficient to state that the title of Lady Elizabeth to the Earldom was established on grounds altogether different from those suggested on her part, and which, if accurate, would have given the title to her opponent.

"Questions may have arisen with reference to Charters of very ancient times, when the language of such instruments had not been fixed by usage, and by a long course of consistent interpretation; and for what I know, and it is indifferent to my argument, there may, under such circumstances, have been given to the word

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‘ hæredes ’ a meaning excluding females and including males only. But we are dealing here with a Charter of the year 1633, when, both on the part of the Legislature and on the part of the Crown, and also in private grants, the distinction between heirs general and heirs male, in point of expression and in succession, had been fixed for a long course of years. Several statutes had passed in the Scottish Parliament long before the time of Charles the First recognising the distinction between heirs general and heirs male ; and long before that time, in the creation of entails, with which the House of Lords has had to deal in appeal cases from Scotland, and in which Committees of your Lordships have had to deal in cases of Peerage, the distinction has been recognised and acted upon ; so that I do not think it would be right to trouble you with more than a passing allusion to that circumstance.

“ The distinction between heirs male and heirs general was brought very pointedly under the attention of a Committee of the House of Lords in the year 1835 in the case of the Barony of Polwarth, upon which occasion Lord Lyndhurst and Lord Brougham advised the Committee. The speeches of those noble Lords were delivered on the 25th of June, 1835. It was a Claim made by Mr. Scott of Harden to the Barony of Polwarth under a Patent dated in 1692 ; the grant was of a very peculiar description, the words were :

— ‘ In dictum Dominum Patricium Hume et hæredes masculos de corpore suo legitime procreatos seu procreandos et hæredes dictorum suorum hæredum.’ The first part was construed to mean the heirs male of the body of Patrick Hume. The heirs male of the body of Patrick Hume had become extinct — the Claimant, Mr. Scott of Harden, now Lord Polwarth, was the heir general of the last heir male, and upon the distinction between the expressions ‘hæredes masculos’ and ‘hæredes’ that Title was allowed to Mr. Scott, the words being ‘in dictum Dominum Patricium Hume et hæredes masculos de corpore suo legitime procreatos seu procreandos et hæredes dictorum suorum hæredum.’

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“ Your Lordships held that the first part of the grant related to heirs male of the body of Patrick Hume. If the word “ masculos ” had been inserted again, it would have limited the descent.”

Lord Brougham. — “ Yes, to the heirs male of the body of the grantee and his heirs male ; it would have gone to the collateral heirs male, according to the law of Scotland ; therefore it depended upon the meaning to be given to the word ‘ hæredes.’ ”

Mr. Knight Bruce. — “ Upon the meaning of the word ‘ hæredes,’ standing by itself unexplained and unrestricted, no doubt can exist :

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the Titles of many Peers who sit in your Lordships' House depend on it; and it is too fixed and too clear to be made a matter of question. No argument could arise here, unless it could be suggested that there was something in the present Patent to justify a different interpretation being put upon that word from that which it ordinarily bears; and I submit there is not.

“The rule of interpretation as to grants was very much discussed by Lord Eldon in the case of the Roxburghe Peerage. The Appendix to the first volume of Wilson and Courtenay's Reports upon Appeals¹, contains chiefly or solely the speeches delivered by Lord Eldon on different days upon the Roxburghe Case in respect to the Earldom. That case depended upon the construction to be put upon a Patent with respect to what was meant by the ‘heirs’ of the daughters of Harry Lord Ker ‘and their heirs.’ It is not necessary to consider what was the material point of difficulty there.”

Lord Brougham.—“Which persons all failing, to the eldest daughter of Harry Lord Ker and their heirs, or some such words.”

Mr. Attorney-General.—“There was some doubt whether it was their or ‘her.’”

Lord Advocate.—“It was ‘y^r,’ which raised a doubt.”

¹ Pages 8. 48. 52. 54.

Mr. Knight Bruce.—“ Lord Eldon thus expresses himself (p. 8.):—‘ My Lords, I am as little a friend, upon principle, as any body can be, to the notion of construing the meaning of one deed by ascertaining what is the meaning of another, more especially if the purpose of the latter deed be to alter the effect of the former ; but still it is necessary to state to your Lordships the history of the titles, for two reasons : First, because I do apprehend it is perfectly competent to every Court of Justice, when it is construing an instrument, to look at other instruments, with a view to determine what is the language and style, and what is the phrase of the law, or of those who are conversant with the law.’

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“ There are not many passages with which it will be necessary to trouble your lordships. At page 48. Lord Eldon thus expresses himself:— ‘ If you shall be disposed to adopt that reasoning, we come next to consider who is that heir? or who are those heirs of tailzie, that are mentioned in this clause of destination? and it becomes necessary for me here to read that clause once more to your Lordships. But, before I do so, I wish, if your Lordships would permit me, to request you always to recollect, that when you are construing such a clause as this, you are applying yourselves to the determination of a question which may depend upon

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principles entirely different from those which would belong to the consideration of the question, if it was a pure dry destination to heirs male, or a pure dry destination to A. and his heirs male, without more; that you are applying yourselves to the consideration of a question which arises upon terms quite different, both in common parlance and in legal language, from those I have last mentioned, which arises, not out of a pure, short, dry limitation, described in strict legal terms connected with an unquestionable designation of an individual, and an individual only, but that you are applying yourselves to the consideration of the question which arises upon a clause, consisting of a great many expressions, a great many obscure expressions, and a great many expressions which consist of terms unquestionably flexible.' So that Lord Eldon founded himself, in considering the particular language of that instrument in the manner he did, upon this, that the words went far beyond that which was a simple limitation to heirs or heirs male; that it contained other expressions, to borrow his language, of an obscure and flexible nature, which required interpretation.

“ At a subsequent part of the judgment his Lordship says (p. 54.), ‘ The clause proceeds thus — ‘ she always marrying or being married to an gentleman of honourable and lawful descent, who shall perform the conditions above and under

written.' Upon this it is said, that these are singular terms. My Lords, they are singular terms ; but they are to be construed consistently with the plural terms occurring before, and the singular expression capable of a plural meaning occurring before — and then the question will be, whether she, that is, the eldest daughter for the time being, or the eldest daughter *de tempore in tempus*, coming in by substitution, is not to be taken as meant. I take it therefore, my Lords, the true question upon this is, are you not to take every word here as the word intended to be used by the author of the deed? If you are to take every word here, as the word intended to be used by the author of the deed, the question then is, are you not at liberty to construe the words of the clause? It is impossible to say that this clause is a clause composed of terms each and every of them having a meaning which, by the law, you are bound to attribute to them. My Lords, I do not mean to say, by that, that when you find out what the meaning of each and every of the terms used is, you are not bound to attribute that meaning to them ; you certainly are bound to attribute that meaning to them ; but you are not in this state, that you must say, whatever may be the persuasion of your own mind as to the meaning of each of these words, the law has put an inflexible construction upon these words. It is a very different question as to the construc-

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tion of the words ‘heirs male.’ It cannot be said, with reference to this branch of the argument, that the law has put a construction upon the words of this clause, which prevents you from putting upon them the construction which you are convinced is their real meaning; besides that, if they have no fixed meaning, neither have they an obvious meaning; for, taking the words as they stand, if I may be permitted to use such an expression in this place, they are nonsense. They are words, however, of which, by construction, you must make sense; out of which, by construction, you must create a meaning; and you must make sense of the words as they stand, if that can be done, for that is the rule of all law.’

“ There is another passage which is as strong as any other in the judgment. It is in these words (p. 52.): — ‘ You cannot reject a phrase except where it is absolutely necessary that you should reject it; and you cannot so correct it, unless there is an absolute and indispensable necessity that you should so correct it. If you can give a consistent meaning to the words forming the phraseology of a deed, I say that your Lordships are not at liberty to alter one syllable of it. You must take the deed as it is; you must make a consistent construction of it as it is. If you can make a consistent construction of it as it is, and, making a consistent construction of it as it is, if

you can give effect to all the words, I say then you are bound, by every judicial rule I ever heard of in my life, to say that the author of a deed meant to use every one word and syllable that he has used. Then, my Lords, I am bound to this, that I cannot suppose there is any mistake. I dare not suppose it,—my duty will not permit me to suppose it, if I can give a consistent meaning to all the words as they are;—and I dare not suppose that any of these words were written by mistake if a sensible meaning can be given to the whole of this sentence, with the word *their* standing a part of it. That is my answer to the suggestion about error, that you cannot lightly infer that there is an error in transcribing a deed, or that you are to read *their* as if it were written *her*. I say, if you are driven to it by necessity, the necessity will justify it; but if it is not necessary, it is the most unjustifiable proceeding which can be taken in judgment.’

“ My Lords, these speeches, as I said, abound in expressions of a similar nature; and it is known to all lawyers that they only explain and illustrate the acknowledged rule of law upon such subjects. I have, notwithstanding, thought that however commonplace it might seem to lawyers, it might not be amiss to cite those expressions when they are used with reference to the grant of a Scotch Peerage, the particular subject upon which we are now engaged. I not only look

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at this Charter in vain for any necessity to depart from the words, but I look in vain for any reasonable grounds why you are to read ‘hæredes’ as any thing but ‘hæredes.’ I do not apprehend any one can give a reason for it. The only colour of a reason which can be suggested is this, that the Earldom of Monteith may have been granted to heirs male. But of this there is no proof: the grant of lands being to the heirs male proves nothing, and the recital in the very Patent now under consideration is, that the Dignity of Monteith was granted to heirs general.

“Supposing, however, I were to concede everything, if such an argument be used, which the argument could require; suppose I were to concede that the Dignity of the Earldom of Monteith had been granted to heirs male, (and more could not be desired by those who would suggest the argument to which I have adverted,) that would form a strong reason, if reason were wanted, for construing the word ‘hæredes’ according to its natural signification.

“The hypothesis is this: that under the grant of 1427 or 1428 Earl William was Earl of Monteith, to him and to his heirs male. What did he gain by being made Earl of Airth, to him and to his heirs male? It might be reasonable to suppose that he had some compensation for the wrong done him by the Crown, and that, if he had the Earldom of Monteith descendible to heirs male, he got the

Earldom of Airth descendible to heirs general. He had been allowed by Charles the First to serve himself heir general or of line to David Earl of Strathern, to Sir Patrick Graham, the husband of Countess Euphemia, and to Malise Earl of Strathern. He appears to have received a new grant of the Dignity of Strathern. All this was taken from him. The Earldom of Airth, as a Dignity, was new; the lands of Airth—included in the same Charter, which, as I said, was both territorial and a charter of Honours—the lands of Airth were already his own, by a grant of the Crown, on the resignation of the Earl of Linlithgow. In my humble judgment, however, the Earldom of Monteith must (like the old Earldom of Strathern) have been limited to heirs general.

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“ But, my Lords, the question is, whether, looking to the doctrine of law as it is enforced by Lord Eldon in the speeches I have read, there is any thing which can warrant you in interpolating the word “ masculos” in this place, and construing the word ‘ hæredes’ in any way except in the legal and natural mode of interpreting such an expression. I venture to express the greatest confidence upon that part of the case. I began with an apology, which I feel to be due, for entering on the discussion of a point which seems to me perfectly clear, for meeting an objection which never may be taken,

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and for which there does not appear to be the slightest colour of foundation.

“ Having stated so much, I will only briefly call your Lordships’ attention to some portions of the evidence which I shall lay before you. The application of this evidence will be described as it goes on. It will fully make out the case of the Claimant. We shall prove the Patent, and its production from the repository of the Montrose family ; we shall prove the transactions to which I have alluded between William the seventh Earl of Monteith and the then Marquis of Montrose, settling a large portion of the estates on the Montrose family, which accounts for the possession of the Patent among the muniments of the noble Duke now at the head of that family. We shall then, by a series of settlements, services, and retours, and the ordinary family evidence, prove every step of the Pedigree in the manner which I have stated. With regard to Lady Mary, who married Sir John Allardice, the evidence of her seniority, if material, is derived only from family reputation, and some family documents. But in truth there does not remain any descendant of her sister Lady Elizabeth, which makes the question of seniority immaterial.

“ The present question is not, whether the Earldom of Monteith does or does not belong to the present Claimant ; that is not involved in the

present Claim ; nor do I ask of your Lordships any expression of opinion upon that point. It is a matter immaterial, or comparatively immaterial, for by a clause in this grant, not unusual in Scotch patents of Nobility, the same precedence as that of the old Earldom of Monteith is given to the Earls of Airth. I beg your Lordships, therefore, to understand, that whatever my own private notion may be as to the title of the Claimant to the Earldom of Monteith, that is not brought before your Lordships upon this occasion. His present Claim is confined to the Earldom of Airth, as to his right to which, I apprehend, with great humility, no reasonable doubt or question can be made.

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“ I will now, with your Lordships’ permission, proceed to the Evidence.”

Evidence was then given to prove the creation of the Dignity, and in support of the Pedigree. The original Patent was produced from the custody of the Duke of Montrose at Buchanan¹; and the Charter of King James the First erecting

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produced.

¹ The Patent was produced by one of the agents of the Duke of Montrose in Edinburgh. As, however, he did not himself bring it from the Charter chest, but received it from his Grace’s Chamberlain at Buchanan, the Attorney General stated, that “ if this depended on custody, the evidence would be insufficient ; but being under the Great Seal of Scotland, that proved it, and therefore he did not object to its production.” (Printed Evidence, p. 4.)

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the lands of Craynis into the Earldom of Monteith, in favour of Malise Earl of Monteith, and the heirs male of his body, was brought from the same custody.

Mrs. Hudson Gurney, the sister of the Claimant, gave evidence of the death of her mother, and of the identity of the Claimant as her son and heir; that it was the tradition of her family, that Lady Mary Allardice was the *eldest* sister of the last Earl of Airth; that Lady Elizabeth, the other sister, married Graham of Gartmore, and that all her descendants were extinct.¹

Mr. Hudson Gurney, her husband, proved the death of the Claimant's mother, he being her executor, and having attended her funeral; — that he had often heard her state that she, as the representative of Lady Mary Graham, the *eldest* sister of the last Earl of Monteith and Airth, was Countess of Airth and Monteith by right, and had been so served by the service in Scotland; and that she supposed her son would take up the Title.²

The documentary evidence, in proof of the Pedigree, and to establish other facts, which has been already referred to, was then delivered in.

Mr. Knight Bruce stated, “that he was in

¹ Printed Evidence, pp. 8, 9, 10. 76, 77.

² Ibid. p. 11.

possession of other evidence which he did not feel it necessary to produce, but that he begged to preserve a liberty of producing further evidence on a future day, if it should be found, when the evidence was printed, that it was defective on any point."

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Mr. Attorney-General submitted, "that better evidence ought to be given with reference to Lady Elizabeth Graham, there being very slight evidence that Lady Mary was older than Elizabeth; that William Graham and others being shewn to be descendants of Lady Elizabeth, it would be desirable to shew more clearly that Lady Mary was the elder sister of the last Earl, or that there were no descendants of Lady Elizabeth now in existence."

Mr. Knight Bruce stated, "that he considered both points as proved; but that, as it was the course to print the evidence before it was summed up, he requested to have an opportunity of presenting further evidence in case it should present itself, and on further consideration it should be deemed necessary."

The Committee was adjourned *sine die*.

Another Claimant to the Earldom of Airth now appeared in the person of Mrs. Mary Eleanor Bishop, wife of Nicholas Donnithorne Bishop, of Cross Deep Lodge, Twickenham, in the county of

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Middlesex, Esq., or (for it is difficult to say which) in that of her grandson, James Bogle Denton Graham Matthews, an Infant.

A Petition ¹ was presented to the House of Lords on the 22nd July, 1839, and referred to the Lords Committees for Privileges by “Nicholas Donnithorne Bishop, Esquire, and Mary Eleanor Bishop his wife; and also of the said Nicholas Donnithorne Bishop, as next friend and on behalf of James Bogle Denton Graham Matthews, an Infant and a ward of the Court of Chancery,” which alleged that Lady Elizabeth Graham, wife of Sir William Graham of Gartmore, was the *eldest* sister of the last Earl of Monteith and Airth; that the said Sir William Graham was “of blood” to the said William Earl of Monteith and Airth; that the said Mary Eleanor Bishop was the heir of the body of the said Lady Elizabeth Graham, and claimed to be “of blood” to William seventh

¹ The Pedigree of the new Claimant was thus stated. Mary, wife of John Bogle (sister of William Graham, who called himself Earl of Monteith, and died in 1783), was represented to have left a son, Andrew Bogle, who was father of James Andrew Bogle, father of Mary Eleanor wife of Nicholas Donnithorne Bishop, whose daughter and heiress presumptive, Mary Eleanor, was the wife of Richard Hunt Matthews, Esq., of Calcutta, and mother of James Bogle Denton Graham Matthews, the infant mentioned in the Petition. It was, however, proved in the most conclusive manner, that the said Mary Bogle *never had a son of the name of Andrew, and that all her descendants are extinct.*

Earl of Monteith and first Earl of Airth, "as well on the part of her male as of her female ancestors," and that she had a superior claim to the Earldom of Airth to that of Mr. Barclay Allardice; but that, being advanced in years, and in bad health, she had no desire to incur the expense and excitement of claiming and asserting her right to the Dignity, but was anxious to protect the interest of her grandson, James Bogle Denton Graham Matthews, the son of her daughter and only child, an Infant and a ward of Chancery, whose father was then in the East Indies; that notice of Mr. Barclay Allardice's Claim had been sent to the father of the said Infant, with the request that he would state whether he wished the right of his son to be waived, and if not, that he would supply the necessary funds to prosecute the same with effect; but that his reply would not arrive in time to take any effectual steps during the present Session of Parliament. The Petitioners, therefore, prayed to be heard on behalf of themselves and of the said minor, by their Counsel, before their Lordships, against Mr. Allardice's Claim; and that no Report might be made thereon during the present Session; or that the rights, claims, and privileges of the Petitioners might be protected and preserved in such manner as their Lordships might think fit.

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The Petition of Mr. and Mrs. Bishop was read, and Mr. Serjeant Stephen appeared on her behalf, who prayed "that the further investigation of the case might be postponed until the next Session, trusting that she would then be enabled to make out a Pedigree prior in point of right to that of the present Claimant; that Mrs. Bishop derived her descent from Lady Elizabeth Graham, who had been assumed to be the younger sister of William the second Earl of Airth, but that he was instructed that the fact was that she was the elder sister; that Mrs. Bishop had not yet had an opportunity of preparing herself with proof of the facts, not having had any public notification of the proceedings until the 9th of July last; that she was advanced in life, and not in circumstances to afford a contest, but that she had a daughter married in India, who was in affluent circumstances, and she wished for an opportunity of communicating with her daughter, to ascertain whether she would be desirous that the Peerage should be contested with a view to her son, now an Infant, succeeding to it; that he trusted not only the case of the Petitioner, for whom he appeared, but the case of the Claimant, would be postponed, as he was not in a situation success-

fully to cross-examine the witnesses who might be called.”

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Mr. Knight Bruce submitted, that “ the Petitioner had had ample time to prepare her Case, the Petition of the Claimant having been referred to the House ever since the year 1834; and the Case of the Claimant being nearly completed, that he was now prepared to give that evidence which had been suggested by the Law Officers of the Crown; that the Claimant had been at considerable expense in bringing witnesses from Scotland, and he trusted that their Lordships would not think it necessary to postpone the Case; that the Counsel for the Petitioner would have as good an opportunity of cross-examining the witnesses as was usually given to Counsel under such circumstances.”

Mr. Serjeant Stephen, being asked how soon after 1834 the Petitioner had learnt the fact of the Claim being referred to the House? stated, that she had not been informed of it until within the last twelve months, and that she was not aware, until the 9th of July, of proceedings being actually taken.¹

The Counsel were informed, that their Lordships would proceed with the Case of the Claimant, and would then be open to an ap-

¹ Printed Evidence, pp. 75, 76.

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Evidence of the
extinction of
the descendants
of Lady Eliza-
beth Graham.

plication on the part of the Petitioner, if it should appear advisable.¹

Additional parole evidence having been given, by the re-examination of Mrs. Hudson Gurney, that it was the tradition in the Allardice family that Lady Mary Graham was the elder sister of the last Earl of Monteith and Airth², Mr. Knight Bruce was heard, to open the case of the Claimant as to the extinction of the issue of Lady Elizabeth, the younger sister of William last Earl of Monteith and Airth; and a large body of evidence, both documentary and parole, was then given of that fact.³

Mr. Knight Bruce then stated that “ he had completed his case in proof of the extinction of the line of Lady Elizabeth Graham, thereby rendering it immaterial whether Lady Mary or Lady Elizabeth was the elder sister; that it was not for their Lordships now to decide whether the evidence adduced established a Claim also to the Earldom of Monteith, all which was now claimed being the Earldom of Airth.”

Mr. Serjeant Stephen admitted that a *primâ facie* case was made out by the Claimant; but that he was prepared to pledge himself, under the

¹ Printed Evidence, p. 76.

² Ibid. 76, 77.

³ Printed Evidence, pp. 76—145. Reference to this Evidence will be found in the notes to pp. 121—126., ante.

instructions he had received, that Lady Elizabeth was the elder sister, and that the line under which the Petitioner, Mrs. Bishop, claimed was not extinct; and for that purpose, he prayed that the Case might stand over till next Session, for the purpose of his offering such evidence.

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The Counsel being asked what proof was now in the possession of the Petitioner (Mrs. Bishop), of Lady Elizabeth being the elder sister, and of her descent from Lady Elizabeth, Mr. Serjeant Stephen stated, that he had at present no evidence; that she had always believed such to be the facts; and that Mrs. Bishop was in attendance, in case their Lordships should wish to put any questions to her as to the grounds on which her belief rested.

The Counsel were informed, that an opponent to a Claim coming at the eleventh hour, who had had an opportunity of coming much earlier, requesting further time, was not attended to by their Lordships, unless he shewed a strong probability of being able to make out a Case.

Mr. Serjeant Stephen submitted, that the most satisfactory course would be to examine the Petitioner, with a view to ascertaining whether it was probable that, in case of a postponement, she would be able to make out her Claim.

The Counsel were informed, that the Committee would adjourn the further consideration of the Case until that day se'nnight, in

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order that the evidence might be printed, and that the Petitioner might, in the mean time, consider whether she had any means of rebutting that evidence; that if a sufficient Case should at that time be presented by her to call for it, their Lordships might then be induced to grant further time.¹

The Committee was adjourned to the following Tuesday.

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On Tuesday, the 13th of August, 1839, the Lords' Committees again met. Mr. Knight Bruce corrected a mistake which had been made at the last hearing, by putting in one MS. Pedigree instead of another; and Sir Harris Nicolas proceeded to sum up the evidence on behalf of Mr. Barclay Allardice.

Speech of Sir
Harris Nicolas.

Sir Harris Nicolas.—“I have also the honour to attend your Lordships in support of the Claim of Mr. Barclay Allardice to the Earldom of Airth.

“Although the terms of the Patent, under which Mr. Barclay Allardice claims, scarcely admit of any doubt or difficulty, it is nevertheless necessary, in consequence of some extraneous statements in that Patent, to advert

¹ Printed Evidence, pp. 145, 146.

briefly to the history of the Dignities which his family had previously enjoyed.

“ The early history of the Earls of Monteith, which is almost identified with that of Scotland, has been so clearly stated by Mr. Knight Bruce, that I need not trouble your Lordships farther than to observe, that King Robert the First granted to his son Prince David the Earldom of Strathern, to hold to him and his heirs; that the Dignity descended to Euphemia, his only daughter and heiress, who became Countess of Strathern; that she married Sir Patrick Graham, who was Earl of Strathern in her right; and that the Title was inherited by her son, Malise Graham. While Malise Earl of Strathern was very young, and a hostage in England for the payment of his Sovereign's ransom, King James, being desirous of increasing the Royal revenues, seized upon his extensive territories, on the pretence that they were a male fief, and divested him of the Lands and Title of Strathern.

“ It appears, however, extremely doubtful whether Malise Graham ceased to be an Earl. The Dignity of Earl was at that time considered personal; and although the Title was derived from certain territories, the Dignity itself could exist without those territories; and thus a personal Earldom, granted to a man and his heirs, would remain as a per-

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sonal Earldom, notwithstanding the deprivation of the lands from which the Title had been derived. I apprehend, therefore, that after the Crown had seized the lands of Strathern, Malise Graham was, nevertheless, still an Earl, and that a personal Dignity still remained in him and his heirs.

“ Soon after the seizure of the lands of Strathern, the Crown, as a compensation, granted him the Earldom of Monteith. The grant itself is not preserved, nor is it on record in any public repository in Scotland ; but there is a Charter dated on the 6th of September, in the 22nd year of the reign of King James the First, erecting the lands of Craynis and other lands, which had formed part of the territories of the old Earldom of Monteith, into a new territorial Earldom of Monteith, in favour of ‘ Malise Earl of Monteith ’ and the heirs male of his body, with reversion to the Crown ; which Charter has been given in evidence, not because it forms part of the Claimant’s case, but because it would not have been right to withhold from your Lordships any statement or document whatever. That Charter relates entirely to lands ; and as the Charter creating the personal Dignity of Earl of Monteith is not preserved, the limitation of the Title cannot be stated with certainty. But there are very strong, and indeed almost conclusive reasons

for believing that it was destined to the *heirs general* of Earl Malise ; first, because it was the ancient practice for Earldoms to be so granted ; secondly, because it had always been destined to heirs general ; and, thirdly, because it was the limitation of the Earldom of Strathern, of which he had been deprived. The Earldom of Monteith had then recently fallen to the Crown by the attainder of the Duke of Albany, who obtained it by his marriage with Margaret Countess of Monteith : and from the earliest period to that time, the Earldom of Monteith had always descended to, and been enjoyed by heirs general. Moreover, all that is positively known of the destination of the Title of Monteith is in the recital of the Charter of 1633, where it is expressly stated to have been granted to Earl Malise and *his heirs*.

“That the Charter of the lands of Monteith did not, and could not, convey the Dignity, is perfectly clear from the terms of the Charter itself. No mention is made of the personal Honour, and the grantee is described in it as “Earl of Monteith,” which proves that he was an Earl before that Charter was granted. I believe there is no instance in which a person created to a Dignity was addressed, at the commencement of the Patent of his Creation, by the Title which it created. In England, I am sure, no case

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of the kind exists; and a search has been made in Scotland without finding such an instance. I therefore confidently submit that the Charter erecting the land of Craynis into a territorial Earldom did not create the personal Dignity of Earl of Monteith; and that the grantee had been previously raised to that Honour.

“It is stated in the preamble of the Patent of 1633, that Earl Malise had been created Earl of Monteith on the 6th of September, 1428; so that there is an apparent coincidence between the date of the grant of the lands, and that of the Charter which is referred to as having created the Dignity. But it was usual at that time to grant two Charters on the same day, or within a short time of each other; one creating the Dignity, and the other granting the revenue or lands for its support.

“The earliest Charters now extant of the territorial Earldom of Strathern to Earl David were dated, the one on the 19th of June, and the other on the 3rd of July, 1371, before which time he had been created Earl of Strathern by a Charter now no longer extant, or by some other form; and there is no doubt that the practice was general. Thomas Earl of Dorset was created Duke of Exeter on the 18th of November, 1416; and, on the same day, he obtained another Patent, wherein he was called “Duke of Exeter,” by which 1000*l.* per annum was granted for the

support of his Dignity; and a third Patent was issued, also on the same day, containing a further pecuniary grant. Another instance occurred in the year 1419. Gaston de Foix was created Earl of Longueville on the 11th of June, by the name of Gaston de Foix; and on the 20th of June another Patent was issued, wherein he was described as "Earl of Longueville," by which he obtained a grant of lands. There are many other cases of grants of lands having been made on the day of, or immediately after, the grant of a Dignity; but the only other instance with which I shall trouble your Lordships, is that of Sir John Beauchamp, who was made a Baron on the 2nd of May, 1447; and, on the same day, he obtained a pecuniary grant by another Patent. I state these cases to show that it was usual to grant two Charters, sometimes on the same day, sometimes very soon afterwards; one of the personal Dignity, and the other of the lands or revenue for its support.¹ It is in this way that I explain the grant of the lands of Craynis having been made on the same day on which (according to the Patent of 1633) the Charter of the Dignity was granted.

"The Charter of the lands of Craynis is as follows:

[Sir Harris Nicolas here read the Charter

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¹ See also the Case of the Earldom of Buchan, p. 86. ante.

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erecting the lands of Craynis into the Earldom of Monteith.¹]

“ It is obvious from this Charter that nothing but lands, and the rights and privileges incidental to lands, was granted; for there is not one word in it relating to the Dignity.

“ The decisions in the Cases of Sutherland and Cassillis have clearly established that no Charter erecting lands into an Earldom or into a Barony, will convey the Dignity, unless it be expressly mentioned. Lord Mansfield expressly stated that principle as the ground on which the judgment of the House of Lords on the claim to the Earldom of Sutherland proceeded; — that ‘ none of the Charters produced affect the Honour, Title, and Dignity of the Earl of Sutherland, but operate as conveyances of the estate only.’ The observations of Lord Camden on that occasion are, if possible, more conclusive upon the point even than the resolution of the House: — ‘ Your Lordships are much obliged,’ he said, when addressing the Committee, ‘ to the noble Lord [Mansfield] for the great attention he has given, and the great trouble he has taken, in establishing the legal rules to govern the descent of Peerages. According to these rules future cases will be determined; and I am sure they are such as your Lordships will now, as I myself do,

¹ See APPENDIX, No. VII.

most heartily concur in. If they are adopted, the decision will be clear whenever the case occurs again; and it will be understood to be proceeded upon the same principle as the case of Cassillis. It will likewise be considered as an established point, that no Charter of the Earldom or Lordship, without specifying the Dignity, shall be understood to carry the Title of Honour.'

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" I trust I have satisfied your Lordships that Malise Earl of Monteith did not derive that Dignity from the Charter of the Lands of Craynis, but that he obtained it under some previous Charter no longer extant. The destination of the personal Earldom of Monteith must therefore be ascertained from other evidence.

" Your Lordships are aware that nothing was more common than for a Scottish Peerage to be destined to one class of heirs, and for the lands to be destined to another class of heirs. The Sutherland case itself was one in point. There was a Charter of the whole Earldom of Sutherland granted to the heir male, which it was pretended conveyed the personal Dignity; but the House decided that it was a conveyance of the estate only, and that the Dignity was not affected by it. The lands of the Earldom of Buchan also stood destined to a different series of heirs from the Honours; and there are several other cases of the kind.

" The Earldom of Monteith vested, after



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several descents, in William the seventh Earl, who was both heir male and heir general of the body of Earl Malise; and it is a material fact in this Case, so far as the Title of Monteith is concerned, that he was retoured *heir general*, and not *heir male*, of Earl Malise.

“ William Earl of Monteith, through the influence of the Duke of Buckingham, became a personal favourite of King Charles the First: he was appointed to the high office of Justice General of Scotland, and President of the Council. In the year 1629, the Earl of Monteith asserted his right, as heir general of David Earl of Strathern, to the Earldom of Strathern. The account of the transaction which I am about to state to your Lordships was drawn up by Sir Thomas Hope, the King’s Advocate, in defence of his conduct on that occasion, he having been censured and misrepresented to the King by the Earl’s enemies.

[Sir Harris Nicolas here read a passage from Sir Thomas Hope’s “Trew Estait.”¹]

“ An inspection of the Charters of the Earldom of Strathern, granted to Prince David and his heirs in 1371, satisfied Sir Thomas Hope of the right of the Earl of Monteith to the Earldom of Strathern, as heir of the body of the grantee. The Earl then obtained the King’s permission

¹ See APPENDIX, No. VIII.

to sue for such of the lands of Strathern as were in the hands of subjects. He executed a Renunciation in favour of the King of all lands in the possession of the Crown; and, to perfect that Renunciation, caused himself to be retoured heir to Earl David.

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“To the Renunciation in favour of the Crown, which is dated on the 22nd of June, Sir Thomas Hope was a party. It is important to state that Sir Thomas Hope was King’s Advocate for many years, and that he held that Office when the Charter on which this Claim is founded was granted. The Renunciation, after reciting the grant of the Earldom to Earl David and his heirs, proceeds:—

[Sir Harris Nicolas here read extracts from the Renunciation.]

“Having thus established his position as heir of blood to Earl David, and executed a Renunciation, in favour of the Crown, of the lands in its possession, and intending to pursue his claim to the lands then belonging to subjects, great jealousy and alarm were naturally excited in the Nobility of Scotland. They were jealous that any Peer should claim a Dignity so closely connected with Royalty as that of Strathern, and which would give him precedence over many of them, while numerous persons trembled for the security of their estates. A storm was raised against him, which was increased by

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Sir John Scot of Scotstarvet becoming his personal enemy. That person drew up a series of articles, representing to the King the danger to the Royal Family which would attend the admission of the Earl's pretensions, in consequence of great doubts being then entertained of the validity of the first marriage of King Robert. Among the charges brought against the Earl, and the one which gave the greatest offence, was, that he had boasted that 'he had the reddest blood in Scotland'—in other words, that he had a greater right to the Crown than the King himself. Though King Charles did not believe these charges, he nevertheless ordered an investigation to take place; adding, that 'It is enough for me to love a man, to have him pulled out of my arms.'

"In 1631 the Earl of Monteith obtained a new Patent confirming the Earldom of Strathern, to him and his heirs male of tailzie. Though it was cancelled, and is no part of the Claimant's evidence, it has been alluded to by the Lord Advocate. The Lords of Session, in their Report to the House of Lords upon the state of the Scottish Peerage in 1740, not being aware that that Patent had been cancelled, represented it as a valid instrument. The Patent of the Earldom of Airth was not on the Register of the Great Seal, and consequently the Lords of Session did not notice it in their Report.

[Sir Harris Nicolas read the Report of the Lords of Session in 1740, respecting the Patent of 1631, and the Patent itself.¹]

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“The Patent of 1631, together with the Retours, and every other proceeding relating to the Earl of Monteith’s right to the Earldom and lands of Strathern, were reduced in March, 1633.

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“It is material to consider the position in which the Earl of Monteith then stood. His right to the ancient Earldom of Strathern, and even his descent from that personage, was denied ; and the new Patent, confirming that Title to him and his heirs male of tailzie, had been cancelled. It was considered necessary, for political reasons, that a new Earldom should be conferred upon him in lieu of that of Strathern ; and that the name of his ancient hereditary Earldom of Monteith should, in fact, be merged in that of the new Dignity. He was therefore created Earl of Airth, with remainder to *his heirs*; that being the destination of the original Earldom of Strathern of which he had been deprived, and of the Earldom of Monteith (as I submit to your Lordships), of which he was in possession.

“I have endeavoured, by this preliminary discussion, to show that the operative clauses of the Patent of 1633, creating the Earldom of

¹ Vide p. 120. ante.

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Airth, are in themselves so clear and decisive as not to admit of any doubt. I thought it necessary, however, to state the previous history of the family, with the view of satisfying your Lordships that the Earldom of Monteith was granted to Malise Graham and *his heirs*. In the Patent of 1633 there is an annexation, as it is termed, of the old Earldom of Monteith to the new Earldom of Airth; but it is important to remember, that it was the *territorial*, and *not* the *personal* Earldoms that were united.

“I have said that the Earldom of Airth was granted because the Crown had deprived him of the Earldom of Strathern, and because it wished that the name of Monteith, which had once been a Royal Title, should cease to be the designation of a powerful and ambitious Nobleman, who had ventured to establish his descent as heir of a Prince in whose representative the right to the Throne was, by some, supposed to be vested. This fact is material; because, if granted as a compensation for the Earldom of Strathern, the fair inference would be (for if it had been granted on any other terms it would have been no compensation at all), that he obtained it with the *same limitation*, and the *same advantages*, as would have belonged to him, if his right as heir of the ancient Earldom of Strathern had been acknowledged. For reasons

of State he had been deprived of that Title ; and the Crown, as some compensation for the act, gave him a new Earldom, with the same destination as that of the old Dignity. I am, however, anxious to be understood that the Claimant does not admit that the Crown had effectually or legally deprived the Earl of Monteith of his old Earldom of Strathern, but only that the Crown supposed that it had done so.

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“ That the Earldom of Airth was granted in lieu of the Earldom of Strathern is likewise obvious from the dates. The reduction of all the proceedings respecting that Earldom took place on the 22nd of March, 1633; and though the Warrant for the Patent of the Earldom of Airth was signed at Whitehall on the 21st of January, 1633, the Patent itself was not sent to the Great Seal until the 28th of March, six days after the proceedings in relation to the Earldom of Strathern had been reduced by the Court of Session. The fact is also shewn by the Earl of Monteith’s having been told by the King himself, ‘ that he behooved to quit that Title of Strathern, and take that of Airth,’ and that he must ‘ dash out of his windows the Arms of the Earldom of Strathern.’

“ I would request your Lordships to bear in mind that this Claim is only to the Earldom of Airth, and that it rests on the Patent of 1633, of which the following are the operative clauses :

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‘Nos ex nostrâ certâ scientiâ proprioque motu fecimus et constituimus tenoreque presentium facimus et constituimus memoratum Willielmum Comitem de Montethe et heredes suos Comites de Airthe.’ — ‘Et volumus concedimus et ordinamus quatenus prefatus Willielmus Comes de Montethe heredesque sui predicti nomen stilum titulum et dignitatem Comitum de Airthe omni tempore affuturo habeant.’

“All besides these clauses, except perhaps the clause granting special Precedency, has, I submit, little or nothing to do with the case; but I will, with your Lordships’ permission, read the Patent, with some remarks as to its construction. It proceeds on a recital that King James the First, on the 6th of September in the year 1428, and in the 22nd of his reign, ‘dedit concessit erexit et disposuit quondam fideli et predilecto suo consanguineo Melisso Comiti de Montethe et heredibus suis totas et integras terras infra Montethe in dicta carta mentionatas et easdem erexit in totum et integrum liberum comitatum omni tempore affuturo Comitatum de Montethe nuncupandum prout, in dicta carta de data predicta latius continetur.’ This is an express statement that the territorial Earldom of Monteith had been erected in favour of Malise Earl of Monteith and *his heirs*, and against that statement there is no evidence whatever.

“I have shewn that the Charter of the lands

of Craynis of that date could not be the one here referred to ; but that the Patent refers to another Charter, by which the personal Dignity of Monteith, as well as lands to form the territorial Earldom, had been granted to Earl Malise and ‘his heirs.’ The recital is, that the Charter of the 6th of September, 1428, was to Malise Earl of Monteith and his heirs ; and then follows a statement, which was strictly consistent with the fact, namely, that the grantee had been served undoubted and lawful heir of line and succession to the said Malise Earl of Monteith. Next, there is an allusion to the services of the grantee, and of his claim upon the Crown for additional favour ; and then comes the statement, which appears to me of vast importance, as affording conclusive proof that the Earldoms united and annexed by this Patent, were the territorial and not the personal Earldoms. It states the intention of the Crown to erect the territorial Barony of Airth into a territorial Earldom : ‘ Et interea temporis nos volentes erigere terras et baroniam de Airthe ad dictum Comitem hereditarie pertinentes in unum liberum Comitatum cum titulo et dignitate Comitis de Airthe modo postea mentionato.’

“ This statement shows that the Crown intended to erect the lands which formed the territorial Barony of Airth, into a territorial Earldom, and that it also *intended* to create the Title

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and Dignity of Earl of Airth ; but as yet there is no actual creation of that Dignity. I come next to the creation of the territorial Earldom of Airth : ‘ Igitur ereximus tenoreque presentium erigimus ad et in favorem prefati Wilhelmi Comititis de Montethe et heredum suorum terras et baroniam de Airthe predicta in unum liberum Comitatum omni tempore affuturo Comitatum de Airthe nuncupandum.’ It is certain that this clause relates only to lands. It is simply a statement that the King had erected the lands and barony of Airth into a free Earldom, to be called the Earldom of Airth, in favour of William Earl of Monteith, and *his heirs*.

“ The Patent then proceeds to unite to the territorial Earldom of Airth, then newly called into existence, the old territorial Earldom of Monteith. ‘ Ac eidem univimus et annexavimus tenoreque presentium unimus et annexamus Comitatum de Montethe absque prejudicio omnimodo prefate carte de Comitatu de Montethe.’ Having thus erected the territorial Barony of Airth into the territorial Earldom of Airth, it annexes thereto all (in my humble judgment) that the Crown could annex, namely, the territorial Earldom of Monteith ; and it then provides that it shall be without prejudice to the Charter by which that territorial Earldom of Monteith had been created.

“ I shall have occasion to comment on that

clause of protection hereafter; and I will proceed now to the clauses of the Patent which relate to the personal Dignity. The lands of Airth having been erected into an Earldom, to which Earldom the territorial Earldom of Monteith was annexed, the Crown proceeds to grant to William Earl of Monteith the personal Title and Dignity of Earl of Airth. ‘Fecimus et constituimus tenoreque presentium facimus et constituimus memoratum Willielmum Comitem de Monteithe et heredes suos Comites de Airth.’ All before these words had no relation whatever to the Dignity, except a mere signification of the King’s intention to create it. The Patent then proceeds: ‘Ac eidem Comitatus univimus et annexavimus tenoreque presentium unimus et annexamus dictum Comitatum de Montethe.’ That the ‘dictum Comitatum’ so annexed was the territorial and not the personal Earldom of Monteith, is evident from the preceding parts of the instrument, and still more so from the words which immediately follow: ‘Cum omnibus libertatibus privilegiis et immunitatibus ad liberum Comitatum pertinentibus,’ which are obviously such rights and privileges only, as are incidental to lands.

“Allow me again to remind your Lordships that the Patent commences with an allusion to the territorial Earldom of Monteith. It then adverts to the lands of Airth, and erects them into the territorial Earldom of Airth. It then

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annexes to that territorial Earldom of Airth the previously existing territorial Earldom of Monteith. It then creates the personal Dignity of Earl of Airth; and again annexes to the territorial Earldom of Airth the territorial Earldom of Monteith, with all the liberties and privileges belonging to a free Earldom.

“The Patent then grants a special Precedency to the Earl of Airth and his heirs, namely, the same Precedency as he had before enjoyed as Earl of Monteith. Such grants were common as well in England as in Scotland. It does not, however, state that the Precedency so assigned to him was the Precedency of the Earldom of Monteith, but that it was the Precedency of a particular date, and before all Earldoms created after that date.

“As another proof that the Earldoms united by this Patent were the territorial, and not the personal Earldoms, it may be observed, that there is not, I believe, any instance of the annexation of two Dignities, while the practice was frequent in Scotland to unite lands to each other, as Baronies or Earldoms. It seems, indeed, extremely doubtful whether Honours created by two distinct Charters, and at an interval of more than two centuries, could be annexed and incorporated in that manner; and I certainly do not know of any instance of the kind.”

Lord Advocate. — “ May I beg to ask my learned friend whether there are any authorities showing that it was usual with the Crown to grant such special Precedency as is granted here?”

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Sir Harris Nicolas. — “ It was done in Scotland frequently¹, and sometimes in England.”

Lord Advocate. — “ I want authority for it.”

Sir Harris Nicolas. — “ In the Annandale case; and there are so many other examples, that I did not expect the fact would be questioned.”

Lord Advocate. — “ The Annandale is a very special case.”

Sir Harris Nicolas. — “ The Lord Advocate, I am sure, must be aware that it has been often done in Scotland.”

Lord Advocate. — “ I was only asking your

¹ Nothing was more common than for Charters or Patents regranting Honours which had been previously granted and resigned, to contain a clause confirming the original Precedency. Among numerous other instances may be cited those of the Dukedom of Buccleuch in 1687; of the Earldoms of Arran in 1586; Buchan in 1617; Abercorn in 1634; Cassillis in 1642 and 1668; Annandale in 1661; Northesk in 1662; Rothes in 1663; Kinghorn in 1672; Lothian in 1678; Wemyss in 1672; Selkirk in 1688; Kintore in 1694; Stair in 1707, and Loudon in 1707; the Baronies of Ker in 1670; Jedburgh in 1670; Sinclair in 1677, and Gray in 1707. See observations on this subject in “Riddell's Remarks upon Scotch Peerage Law,” 8vo, 1833, pp. 23. 70—79.

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authority for the position that the instances are so very common in Scotland. You refer to the case of Annandale?"

Sir Harris Nicolas. — " I refer to that case only because it is the first which occurs to me ; but there are numerous others.

" It is highly important to observe, that at the conclusion of the Patent there is a clause re-creating, as it were, the personal Earldom of Airth in favour of the grantee and his heirs, in which there is no reference whatever to the annexation of the territorial Earldoms : ' Et volumus concedimus et ordinamus quatenus prefatus Wilhelmus Comes de Montethe heredesque sui predicti nomen stilum titulum et dignitatem Comitum de Airthe omni tempore affuturo habeant iisdemque fruantur et gaudeant idque cum loco prioritate et presidentia ante omnes alios Comites iis antea debitis virtute dicte carte,' of the 6th of September, 1428.

" Whatever may have been annexed, or whatever was the actual destination of the personal Earldom of Monteith, it cannot, I submit, have any operation on the distinct grant of the Earldom of Airth to the grantee and *his heirs*. But whether the lands or the Honours were united to each other, it is to be remembered that there is nothing whatever in this Patent which prohibits a separation of them ; nor is there any clause which made the existence or the enjoyment of

the one, to depend upon the existence or enjoyment of the other. On the contrary, the clause protecting the Charter of 1428 tends to show that a severance was contemplated. There are some cases in which a Marquis or an Earl has been raised to a higher Dignity with a limitation to a particular series of heirs, the Patents of which creations contain a clause providing that the new grant of the higher Honours should not affect the grant of the former Dignities.¹

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“This Patent was confirmed by the Privy Council of Scotland; and the minute of the proceedings, which is in evidence², confirms my position, that the Earldoms which were united to each other were the territorial, and not the personal Earldoms.

“I now beg leave to call your Lordships’ attention to the endorsement of the Charter of 1428, by which the lands of Craynis were granted to Malise Earl of Monteith, because it shows the opinion entertained of that instrument nearly two centuries since; namely, that it was merely a Charter of lands. The endorsement is this—‘By King James the First to Malise Earl of Monteith of the lands of Monteith.’

“Supposing, for a moment, it were admitted that the Earldom granted by this Charter was the

¹ Vide p. 100. ante.

² Vide p. 97. ante.

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personal Earldom of Monteith, and that it was destined to a different class of heirs from those to which the Earldom of Airth was destined, I submit that the circumstance could have no operation whatever upon the specific grant of the Earldom of Airth to William Earl of Monteith and his heirs. The sole object of the Patent was to create the Earldom of Airth. In construing that Patent, the manifest intention and only object of the Crown must be kept constantly in view ; and consequently all which bears upon the creation of that Dignity is of great importance. With respect to the meaning of the two clauses of creation and limitation of that Title, there cannot, I humbly presume, be a doubt. The destination is of the most simple description, and it is expressed in terms which are wholly free from ambiguity. Those clauses are perfectly consistent with each other. They are consistent also with every other line of the instrument ; with the object of the Crown ; and with all the circumstances under which the grant was made.

“ Whether the Earldoms annexed were personal or territorial, or both, I must be allowed to repeat that it was not the new Earldom of Airth which was annexed to the old Earldom of Monteith ; but the old Earldom of Monteith was united to the new Earldom of Airth ; hence, if the grant had any effect upon the Earldom

of Monteith (supposing that it stood destined to heirs male of the body of Earl Malise), Monteith was to follow the destination of Airth, not that Airth was to follow the destination of Monteith.

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“A clear and simple destination in a Patent of the year 1633, to a man and his ‘heirs’, cannot be cut down to ‘heirs male,’ except upon the most decided proof that such was intended to be the limitation. How then can such a destination be affected by a mere *supposed* limitation in a Charter *which does not exist*? The territorial Earldom of Airth was erected for the first time, and for the first time the personal Dignity of Earl of Airth was created. In that creation the Crown clearly and distinctly marked out by whom the Dignity should be inherited. Though there is a reference in the Patent to the destination of the Earldom of Monteith, there is no reference to any former creation of Airth; and not only is it the fair presumption that the destination of the Earldom of Monteith was the same as that of Airth, but the Patent itself expressly states that it was so. It states that the Earldom of Monteith had been, by King James the First, granted to Malise Earl of Monteith and his heirs; and it gives the new Earldom of Airth, which it was the sole object of that Patent to create, to the grantee, and his ‘heirs.’ This destination occurs repeatedly. It occurs twice

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in relation to the lands, and it occurs twice in the operative part as to the Dignity.

“ The only reason for referring, in the preamble of the Patent, to the grant of the personal Earldom of Monteith, was, to give the Precedency belonging to that Dignity to the new Earldom of Airth, which Title the grantee was in future to bear, instead of that of Strathern, and instead also of that of Monteith, which it was the policy of the Crown to merge or extinguish. That the Earl of Monteith might not, however, lose his Precedence by this arrangement, the clause to which I have alluded was introduced into the Patent.

“ There are one or two other circumstances which seem clearly to point out what must have been meant by the destination to ‘ heirs ’ in this Patent, which it is material I should state to your Lordships. The King’s Advocate, Sir Thomas Hope, was, I believe, informed of all instruments that passed the Great Seal of that Kingdom¹, and I presume that this Patent must have been brought to his notice.”

Lord Advocate.—“ I am sure that he is not now.”

Sir Harris Nicolas. — “ I thought the Office was similar to that of Attorney-General in England.”

¹ Vide pp. 84. ante.

Lord Advocate. — “No, it is not.”

Sir Harris Nicolas. — “Perhaps it might have been in the time of your predecessor.”

Lord Advocate. — “No, I do not think so.”

Sir Harris Nicolas. — “However, it is clear that Sir Thomas Hope was aware of the limitation in this Patent.”

Lord Advocate. — “There is no doubt of that; there are a great many proceedings taken in relation to it by him.”

Sir Harris Nicolas. — “He was an eminent lawyer, and he it was to whom the Earl of Strathern showed the two Charters which had been granted to Earl David in 1371, and asked his opinion of them; and because by those Charters that Earldom was destined to ‘heirs,’ Sir Thomas Hope considered that the heir general, and not the heir male, was entitled to it. He was also a party to every subsequent proceeding: he was a party to the Renunciation, and to the subsequent grant or confirmation of the Earldom of Strathern in 1631. He continued in office when all those instruments were reduced by the Court of Session, so that every proceeding on the subject was within his knowledge. He was aware that the Patent of the Earldom of Airth granted that Dignity to the ‘heirs’ of the grantee; and as he knew that by those words the Title would descend to heirs general, he must have known that such

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was the intention of the Crown. In fact, nothing appears to have been done without the cognizance of the King's Advocate; and if that Officer considered that the Charters of 1371 of the Earldom of Strathern 'to heirs' carried the Earldom to 'heirs general,' it cannot be said that he did not know that the same construction would be given to the word 'heirs' in the Patent of 1633. I am justified, therefore, in saying that Sir Thomas Hope must have known that the Patent would convey, and therefore that it was intended to convey the Dignity of Earl of Airth to the heirs general of the grantee.

"Many of the Patents of Peerages at that period exhibit singular nicety and discrimination in the terms of their limitations. There is a small number which limit the Dignities to 'heirs male of the body,' a larger number to 'heirs male,' and there are a few which contain special limitations. A list has been compiled, which I believe is tolerably correct, showing the variety of limitations in the Patents of that time, whence it appears that the usual destination was to 'heirs male.' In the reign of King Charles the First, sixty-seven peerages appear to have been granted. Of those, thirteen were to heirs male of the body; forty-two to heirs male; four to heirs male whomsoever; four to heirs male of the body, whom failing, to heirs male whomsoever; and three simply 'to heirs,' namely, the

Earldoms of Leven, Airth, and Dysart. These peculiar destinations could have arisen only from the peculiar circumstances of each case ; and it is impossible to contend that they have not a distinct effect from the usual destination to heirs male. In the case of Dysart, the grantee having died, his daughter succeeded to the Earldom ; and there is at this moment a Countess of Dysart in her own right. The Earldom of Leven has also been inherited by a female.

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“ There is, moreover, another fact, which appears to me conclusive that the word ‘ heirs ’ in this Patent was intended to bear its usual technical meaning ; namely, that when the Patent passed under the observation of Sir Thomas Hope, he must have had the Patent of 1631, confirming the Earldom of Strathern, before him. The variation between the destinations in those instruments must therefore have been advisedly and purposely made. That the Scottish lawyers of the period did not give any other interpretation to ‘ heirs ’ than ‘ heirs general ’ is shown by the conduct of Sir Thomas Hope himself ; and by this striking circumstance, that though the alleged incorrectness of the Earl of Monteith’s pedigree, as heir of David Earl of Strathern, was made the pretence for reducing the Retours, and for cancelling the Patent of 1631, no one ventured to deny that the destination in the Charters of Strathern of 1371

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to 'heirs,' conveyed the right to the title and lands to *heirs general*. I feel that I cannot press this fact too strongly upon your Lordships, because every possible expedient was used to impeach the Earl of Monteith's claim to the Earldom of Strathern; and if it could have been successfully pretended that 'heirs' in those Charters did not mean 'heirs general,' no person can doubt that his pretensions would have been defeated upon that ground, rather than upon a statement so notoriously false as that he was not the heir of Prince David.

"As I believe there will be great difficulty in establishing a right to reply to the objections which may be made to this Claim, on behalf of the Crown, I am the more anxious to impress upon your Lordships, that the word 'heirs' in the Patent of 1633 ought to receive its proper, simple, and technical meaning of 'heirs general.' That 'heirs' may be a flexible term I am aware; but I submit it can never be divested of its usual and *primâ facie* import when it is possible for it to bear its usual, natural, and proper meaning, consistently with the other expressions in the instrument in which it occurs. In other words, it only becomes flexible from absolute necessity, arising out of other expressions or statements in the instrument itself.

"The rules of construction of Charters are so clearly laid down by Lord Eldon in the

Roxburghe case, that I shall take the liberty of reading some passages from his Lordship's judgment on that occasion.

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[Sir Harris Nicolas read two of the passages, which occur in the speech of Mr. Knight Bruce.¹]

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“ In another place Lord Eldon says², ‘ If the deed clearly expresses it, you must give effect to it,—you cannot fancy for him,—you cannot insert destinations he has not inserted.’² His Lordship elsewhere² observes, that ‘ every word of a clause must be considered as the very word which the author of a deed meant to insert in his deed, because he has inserted it; and upon this great leading principle, that in judgment you never can (unless you are justified by unavoidable necessity) reason upon the supposition that the man has made a mistake, by inserting in a deed the word which he has inserted in it.’ If this be the rule of law in construing private deeds, the propriety of giving their usual legal signification to terms used in Patents of Honour is much greater; because the Crown, being surrounded by responsible advisers, cannot be supposed to have acted without due consideration, or to have made a mistake.

“ The same doctrine was held by Lord Gifford,

¹ Vide pp. 172—176. ante.

² Wilson and Courtenay, pp. 57, 58.

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in *Stewart v. Stewart*, in 1824.¹ His Lordship said, 'It is admitted on all hands, that *primâ facie*, and according to the technical meaning of the terms used in the first destination of this marriage contract, the respondents are entitled, because the words *heirs* and *assignees*, or *heirs whatsoever*, describe the *heirs of line*, which character these ladies, in conjunction with the appellant, take; but then it has been contended that, although this is *primâ facie* the technical meaning of this destination, that meaning may be restricted by the context, or other parts of the instrument, if it can be clearly shewn that this party intended to use those terms in a more restricted, and limited sense; and undoubtedly, I apprehend that this is a correct statement of the law of Scotland with respect to the construction of instruments; and in this sense it is that the word 'heirs,' or the words 'heirs male,' are terms which in this case and other cases have been by your Lordships treated as flexible terms; that is, they have a meaning which is to be applied to them, provided there is nothing in the case to shew that they were meant in a restricted sense. But if so, then, although such be their general meaning, they must be limited and restrained; and therefore the terms used in this case and in others,

¹ Shaw's Cases, vol. ii. p. 149.

have been considered to be flexible. It is also admitted by the learned persons, all of whom pronounced opinions upon this case in the Court below, that although such be the law, you are undoubtedly not to restrain the meaning of terms of this nature by mere conjecture, or upon a notion that without restraining them you cannot carry that into effect, which you conjecture would have been the meaning of the party, if he could have foreseen the events which have happened—the events which raise the question as to the construction of this instrument.’ Lord Gifford then adverted to Lord Eldon’s luminous judgment in the Roxburgh case, and concluded his judgment in terms which apply with great force to the repeated manner, and unqualified sense, in which the word ‘heirs’ occurs in the Patent of the Earldom of Airth: ‘Anxiously applying those principles to this case, I, for one, have not been able to discover in the whole of this instrument sufficient to entitle me to say that there is that “declaration plain,” that necessary implication, to show that the author of this deed meant by the terms “heirs” and “assignees whomsoever” any thing different from what is their obvious and technical meaning. When I find him using the expressions in a more limited sense, following almost immediately that destination; when I find him repeating those terms in the final part

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of this destination, I cannot, for one, understand him to mean by "heirs and assignees whomsoever," that which he has expressed in another part of the instrument by "heirs of the body."

"Applying these rules of construction to the case before your Lordships, which is a simple destination to 'heirs,' in an instrument wherein only one class of heirs is mentioned throughout, while the recital in the preamble, as well as in every other part of the Patent, shows that 'heirs general,' and not 'heirs male,' were in the contemplation of the framer of the instrument, I would submit that that destination cannot be divested of its usual import except by unavoidable necessity. To adopt the emphatic words of Lord Eldon, when speaking of the term *heirs male*, the word *heirs* has 'a *prima facie* fixed meaning not to be torn from it except upon what might be stated to be declaration plain of intention;' or, to use Lord Hobart's phrase, 'declaration plain, or absolute necessary implication.'¹ How, then, can it be contended that the proper technical meaning should be wrested from the term 'heirs' upon the supposed contents of a Charter granted two hundred years before, which related to a distinct investiture, and which is no longer in exist-

¹ Wilson and Courtenay, Appendix, p. 71.

ence? I would also submit with confidence, that even if instead of the destination of the Earldom of Monteith having been described in that Patent to have been to Earl Malise and his 'heirs,' its destination had not been mentioned, and if there had been clauses, framed in the strongest terms, annexing not Monteith to Airth, but Airth to Monteith, with the same destination to 'heirs,' and prohibiting a severance of the Dignities; still the legal presumption would be, that the Earldom of Monteith was destined to 'heirs general,' which presumption would prevail until the Charter limiting the Dignity of Monteith to 'heirs male' was actually produced in evidence. But in the case before your Lordships, I have shown that there is almost a moral certainty that the Earldom of Monteith was (as the Crown itself has stated it to have been) granted to Earl Malise and his heirs.

"The Pedigree is so satisfactorily proved that it will not require many observations. Having shown that the Earldom of Airth was created to the Earl of Monteith and his heirs, I shall proceed to show that the Claimant is the sole heir of the grantee. It would be sufficient to prove that he is descended from the elder sister of the last Earl; but the extinction of the heirs of the other sister has been fully established. It has been proved that the Dignity of Airth was granted to William Earl of Mon-

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teith and his heirs: it has been proved that William so created Earl of Airth married Agnes, the daughter of Patrick Lord Gray; that he had a son and heir, John Graham, commonly called Lord Kilpont, who married Lady Mary Keith. But I shall not occupy your time by stating every step of the Pedigree, unless your Lordships require me to do so."

Lord Chancellor.—"We have it all in print."

Sir Harris Nicolas.—"Yes, my Lord. I will only further observe, that it has been proved that the Earldom of Airth was created in favour of William Earl of Monteith and *his heirs*; that Mr. Barclay Allardice, the Claimant, is the sole heir of Lady Mary, the eldest sister of William last Earl of Airth; and that all the descendants of Lady Elizabeth, the other sister, are extinct."

The Lord Advocate was then heard on behalf of the Crown.

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The Lord Advocate.—"With respect to the Pedigree, I shall not trouble your Lordships with any observations. As far as I have been able to turn my attention to the matter, I am of opinion, tracing the different steps of the Pedigree shewn on the genealogical tree, under which the Claimant founds his claim, that it is sufficiently proved; and having that opinion, I

shall not trouble your Lordships with any observations upon it.

“ But there is a point of Law to which my learned friend has directed his whole attention, and which was submitted to your Lordships also at some length by my learned friend Mr. Knight Bruce, who opened the Case, arising upon this Patent of 1633, which is referred to as that under which this Dignity is now claimed by Mr. Barclay Allardice; a point of Law well deserving the serious consideration of your Lordships, turning upon the construction of the word ‘ heirs.’ That word is unquestionably a flexible term; it cannot be denied to be so; but the question your Lordships have to consider is, whether, with reference to an Instrument which is of so peculiar a nature as this Patent of 1633, it can be held to mean ‘ heirs whatsoever,’ ‘ heirs general,’ or ‘ heirs of line,’ that Patent of 1633 referring to another where the word clearly must be held to refer to ‘ heirs male¹,’ namely, that under which the Earldom of Monteith appears to have been held, — the Charter of 1428² being specially referred to, no

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¹ See the remarks on this subject, ante.

² The Charter referred to in the Patent of 1633 is said to have been dated on the 6th of September, 1428, anno 22 James I., and to have granted to Malise Earl of Monteith and *his heirs* all and the whole of the lands within Monteith therein mentioned; but the Charter produced *in evidence*

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less than four times in this Instrument,—whether the construction of that word in the Charter of 1633 is not confined to ‘heirs male,’ it being quite clear that the former Patent is so confined.¹

“ I must ask your Lordships to look very particularly at this Instrument, for it is altogether of a very peculiar nature. [The Lord Advocate here read the patent of 1633, and pointed out where it referred to the Charter of 1428.]

“ Your Lordships observe in this Patent of 1633, which is said to give to William Earl of Monteith and his ‘ heirs general,’ or ‘ heirs whatsoever,’ the Earldom of Airth, a reference no less than four times made to the Charter of 1428, and making a reference no less than four

was dated on the 6th of September, 22 James I., and granted to Malise Earl of Monteith all and singular the lands therein named; viz. the lands of Craynis, &c., within the sheriffdom of Perth, which lands it erected, *de novo*, into the free Earldom of Monteith (but the other lands which had previously formed part of the said Earldom were expressly reserved to the Crown), in favour of the said Malise and the heirs male of his body lawfully begotten or to be begotten; whom failing, to return to the King and his successors. (Vide Appendix, No. VII.) Hence the identity of the two Charters is by no means certain.

¹ There is no *proof* that the *personal* Earldom of Monteith was granted to *heirs male*. On the contrary, every circumstance of the case (except the Charter of the lands of Craynis) tends to show that it must have been conferred on Malise Graham and *his heirs*. Vide p. 22. ante.

times to that Charter of 1428, giving the Earldom. With reference to that Charter, conferring the Dignity on the Earls of Monteith, you will find that, referring to that Charter, the destination in the Charter of 1633 is no doubt to the Earl of Monteith and “his heirs.” But the question for your Lordships to consider here is, whether the words ‘William Earl of Monteith and his heirs’ in this grant of 1633 do not mean ‘William Earl of Monteith and his heirs *male*.’ The Earldom of Monteith being conferred, as I shall shew your Lordships, on William Earl of Monteith and his heirs male¹, whether or not the words in this Patent can be well construed to mean ‘William Earl of Monteith and his heirs general.’

“Now let us suppose, for a single moment, that the Earldom of Monteith had been granted to the ‘heirs male’ which I shall shew your Lordships, contrary to that stated, I will not say by the other side, but by the Claimant, that that was the proper destination of the Dignity; that it was not to the ‘heirs of line’ or ‘heirs whatsoever,’ but to the first grantee and his ‘heirs male.’ My learned friends have said they are not claiming the Earldom of Monteith——

Mr. Knight Bruce.—“Not at present.”

Lord Advocate.—“My Learned Friend says

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¹ See Note 2. in page 219.

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‘not at present.’ If he could establish that the Earldom of Monteith went to the ‘heirs general,’ (and that was the view in which they were very much inclined to argue the case,) if they could have successfully argued that the Earldom of Monteith went to the heirs general, instead of claiming the Earldom of Airth, they might have claimed at the same time the Earldom of Monteith; and if they could have made out their claim to the Earldom of Monteith, the case would have been clear of all difficulty: they might not only establish their claim to the Earldom of Airth, but have embraced in the decision the Earldom of Monteith. But they do not claim the Earldom of Monteith; and we need not consider the right to that Earldom, except as it is involved in the Earldom of Airth. But, supposing that conceded, which I think the absence of that claim goes a long way to concede, that the Earldom of Monteith was a male Dignity, how is it possible to read this Charter of 1633, as supporting a claim under the grant to William Earl of Monteith and his ‘heirs general’ of the Earldom of Airth, and not his ‘heirs male,’ the descent under that Patent being a descent to ‘heirs male?’

“Why, my Lords, in the first place, it begins with a reference supposing the Charter of 1428 to be a Charter which either for the first time created the destination, or truly expressed it; it

begins with a reference to the Charter which gave it to the Earl of Monteith and ‘his heirs;’ it says :—‘Mellisse Comiti de Montethe et heredes suis;’ but if a particular Charter is referred to, and a person is said to hold by that Charter certain lands or dignities to himself ‘et heredes suis,’ the ‘heredibus suis’ cannot be taken to refer to a different class of heirs than those expressed in the Charter that grant was made by¹, the Crown describing the grantee as holding to himself and ‘his heirs.’ The question then remains, whether those words included ‘heirs general,’ or whether the Charters referred to show they were a particular class of heirs,—a more limited class of heirs. If the Charter of 1428, in creating the Earldom of Monteith, re-

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¹ Admitting the correctness of this statement as a general proposition, there are, nevertheless, several circumstances which render it inapplicable to the present Case. In the first place, there is *no evidence* that the Charter referred to in the Patent of 1633 was the Charter of the lands of Craynis. Secondly, the recital that the grantee William Earl of Monteith was *undoubted heir of line and succession* of Earl Malise, in preference to describing him (as was also the fact) as heir *male* of that personage, clearly shows the belief of the Crown that the Earldom of Monteith was destined to *heirs of line*, and *not* to heirs *male*: and, thirdly, the constant repetition of the word *heirs*, without once using the term heirs *male*, shows, beyond dispute, the *class of heirs* which was in the mind of the framer of the instrument. See the remarks on this subject in a former part of the volume, pp. 83. *et seq.*; and particularly in pp. 101—105.

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ferred to a particular and limited class of heirs¹, the Charter of the lands of Craynis will receive an explanation from the reference.

“ It is quite clear that this reference to Earl Malise could mean only Earl Malise and ‘his heirs,’ whether ‘heirs of line,’ or ‘heirs male,’ to whom the grant was made in that Charter. The supposition I now state is, that they were not ‘heirs of line,’ but ‘heirs male.’ Now, before referring to the former grant, by which the Honours were given to his heirs male², the Crown goes on with a recital of his former services; and being desirous to reward him, says: — ‘We, willing to erect the lands and barony of Airth, to the said Earl heritably belonging, into a free Earldom, with the title and dignity of Earl of Airth, in manner hereafter mentioned; therefore have erected, and by the tenor of the presents do erect, for and in favour of the aforesaid William Earl of Monteith and of his heirs, the lands and barony of Airth aforesaid, into

¹ The Charter by which the personal Earldom of Monteith was created to Earl Malise is not extant; and (for the reasons already stated) there are the strongest grounds for supposing that that Dignity was granted, not to heirs *male*, but to heirs *general*. The destination of the lands of Craynis is so clearly expressed, that it does not require any explanation from the previous grant of the *personal* Dignity.

² There is no former grant by which the Honours were granted to *heirs male*: the Charter conferring the *Dignity* is not extant.

one free Earldom, in favour of William Earl of Monteith and his heirs."

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"It begins by reciting a Charter which, upon the supposition I now argue, gave the lands to Malise Earl of Monteith and 'his heirs male.' Then, after the recital, 'We, being willing to erect this land into a new barony in favour of William Earl of Monteith and his heirs,' it proceeds to do so. Now, who are his heirs? Does it mean the heirs of the body, — stopping here, before we get to the rest of this very complex and singular instrument, — are they the 'heirs of the body' or the 'heirs whatsoever' of the Earl of Monteith? I think the circumstance of referring to the particular grant of the Earldom of Monteith, which is to him and 'his heirs male¹,' is strong evidence of an intention to erect these lands into an Earldom with the same succession, the Patent saying 'heirs whatsoever,' not using the words 'heirs of line²,' which would

¹ If the reference had been merely to a particular Charter, of which the existence and identity are indisputable, and if the Patent of 1633 had not recited the limitation in the Charter referred to, the Lord Advocate's argument would have been cogent; but the presumption of identity of the Charter of the lands of Craynis, with the Instrument alluded to in the Patent of 1633, is rebutted by the description there given of it; and by the Patent expressly stating that the Charter to which it refers contained a destination, not to the heirs *male*, but to the *heirs* of Earl Malise.

² It is true that the destination throughout is simply to William Earl of Monteith and "his heirs;" but, in de-

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exclude the supposition of its being confined to 'heirs male,' but using the word 'heirs,' simply giving to William Earl of Monteith and his heirs those lands erected into a new Earldom.

The question¹ is, having got so far in the construction of this Patent, are those heirs the heirs of the Earldom of Monteith, or 'heirs general?'

"How does the grant go on? There is a very special reference to this Charter, for it is singular it is four times referred to. It says that the two Earldoms are to be united.² It is quite true that the mode in which this Earldom was united was not by uniting the Earldom of Airth with

scribing his status in relation to Earl Malise, he is called, not "heir male," as he also was, but "*undoubted and legitimate heir of line and succession*" to that person.

¹ This question seems to have been framed on the supposition that the heirs of the Earldom of Monteith were the heirs *male* of Earl Malise, and not his heirs *general*; — an inference for which (it is submitted) there is no sufficient ground. The proper question would appear to be this: Is it not evident from the Patent of 1633, that the Crown, in granting it, acted on the belief that the Earldom of Monteith was, as it states, destined to *heirs general*; and, even if that belief could be shewn to have been erroneous, by the production of the original Charter itself, would the establishment of that fact be sufficient to affect or control the grant of a *new* and *distinct* Earldom to *heirs*? In this case, however, neither the original Charter, nor even a copy of it, is extant.

² The Earldoms thus united were, it is contended by the Claimant, the *territorial*, and not the *personal* Earldoms, of which there are several examples; but there is not even one instance of an annexation of Dignities. See pp. 98, 99., ante.

that of Monteith, but by uniting the Earldom of Monteith to that of Airth. But the two Earldoms were united. Then, here is a new Earldom created in favour of the Earl of Monteith and 'his heirs;' in virtue of these Patents that then existed, the Earl of Airth is to be entitled to the Earldom of Monteith. Is this instrument, then, to be read according to the ordinary construction of the word 'heirs?' Is it to be taken that in uniting those two Earldoms, the Crown could have contemplated that one should descend to 'heirs male,' and the other to 'heirs general?'¹ That is the supposition on the other side²: there is to be a union of the two Earldoms. I think I am not pressing this stronger than I ought to do. I am sensible I speak here as the adviser of the House rather than an adverse party; but it is necessary for me to press the point only sufficiently to bring it to your Lordships' attention. There is an union of the two Dignities. On one supposition, the Dignity of Airth goes to the 'heirs male;' and on supposition of its going to the 'heirs male' you get rid of the difficulty. By reading the words 'William Earl

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¹ Here the Lord Advocate again *assumes* that the personal Earldom of Monteith was destined to *heirs male*; but it must be repeated, that there is no *evidence* of that fact; and that the Crown states it to have been destined to *heirs general*.

² Not so. The Claimant contends that *both* Earldoms were limited to *heirs general*.

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of Monteith and his heirs,' 'his heirs' as expressed by the Patent formerly granted, there is no inconsistency.¹

"But, my Lords, it does not stop there. The Crown proceeds to make a grant which it was not usual² for the Crown to make, namely, the Precedency formerly granted to the Earls of Monteith, — a Precedency over all the Earls who had been created subsequently. It goes on to say that the Earl of Airth shall hold the Place and Precedence of the Earls of Monteith in all time to come. Now mark the consequences. That is very intelligible if the heirs of the new grantee were co-incident with the Earls of Monteith³; if, in creating the new Dignity of the

¹ "Inconsistency" would be more easily, as well as more satisfactorily avoided, by construing this Patent by the usual rules of construction, viz. by what is contained within its four corners. It states, that the Charter of the 6th of September, 1428, was to the *heirs* of Earl Malise, and that the grantee was the *heir of line* of that person; and it then grants the new Earldom to the *heirs* of the said grantee. All its terms are, therefore, strictly accordant with the design of the Crown, and with each other; and it is not until *another Charter is called in*, that any inconsistency arises. It cannot be necessary to observe, that the right to use the Charter of the lands of Craynis, entirely depends upon its being, *undoubtedly*, the Charter referred to in the Patent; but of that fact there is no *proof*.

² See the numerous instances adduced in p. 208, 209. ante.

³ It is contended by the Claimant, on the authority of the whole contents of the Patent of 1633, that the destinations of the Earldoms were "coincident," and that the conditions were "consistent." For remarks on the clause of precedency, vide p. 79, 80. ante.

Earldom of Airth, the conditions were quite consistent with those on which the Earldom of Monteith depended. But what would be the case if the nature of the second grant were different? All the heirs to the Earldom of Monteith might have failed before the new one came into operation: the further destination of the Earldom of Airth would not come into operation till the destination of the Earldom of Monteith was exhausted: still, the Place and Precedency would be granted. But, on the supposition on which this claim is made, suppose two generations have passed away of Peers possessing the two Earldoms; suppose the Earl of Monteith had two sons, and the eldest son had a daughter; that daughter, as heir of line, would take the Earldom of Airth, plainly, upon that construction: it is the very ground on which they claim. But the union of the Earldom of Monteith would then cease; the original succession to that Earldom must prevail, and the second son, as 'heir male,' would have been Earl of Monteith. Then, by the construction put upon this word 'heirs,' in this Patent, there must have been two Peers, occupying the Place and Dignity of the Earl of Monteith."

Mr. Knight Bruce. — "Not according to our argument."

Lord Advocate. — "I cannot say how far my learned friends have been able to satisfy your

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Lordships that as the Earldom of Monteith was to be annexed to that of Airth¹, that was to extinguish the prior destination of the Earldom of Monteith. I conceive that must remain untouched. Then, if that were to remain untouched, would not the second son have been Earl of Monteith, and, as such, entitled to sit in the same place in the Parliament of Scotland? Then, in that situation, how could this party, the son of the grand-daughter, have sat in the place, priority, and dignity of the Earl of Monteith? In this very extraordinary instrument you are drawn into what Lord Eldon said in the Roxburgh case was equivalent to a declaration²: you are drawn, by necessary inference, to hold that the two must be consistent. ‘Heirs male’ is a much more difficult word to construe than the simple word ‘heirs;’ it has a meaning which is not in general to be overturned except the instrument requires it; but Mr. Erskine says, in Book iii. title 8. section 47. : ‘Doubts frequently arise who the heir is that is truly intended by the maker of a

¹ See before, where reasons are given to shew that it was only the *territorial* Earldoms that were united; that those Earldoms were severed; and that such severance had no effect on the Dignities.

² The whole of this part of the Lord Advocate’s argument proceeds on the assumption, that the personal Earldom of Monteith stood destined to heirs *male*; but if, as is contended by the Claimant, it was limited to *heirs general*, all these difficulties would be avoided.

settlement or entail. Upon this head it may be premised, that though by the word ‘heir,’ in the most proper signification, the heir at law is understood, it is certain that that general term has not always one fixed signification, but varies according to the nature of the subject, or of the security or other circumstances; signifying sometimes heir at law, sometimes heir of conquest, sometimes heir *in mobilibus* or executors. It is a term that is remarkably susceptible of explanation in the law of Scotland.”

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Then, my Lords, a doubt arising on this instrument, before looking to the Charter of 1428, if your Lordships are satisfied that the Earldom of Monteith was granted by the Patent of 1428 to heirs male, I conceive it would be impossible to construe this consistently with common sense into a grant other than to William Earl of Monteith and his ‘heirs male;’ for how can the Crown possibly make an annexation of two Earldoms with successions in consequence of which they might be disunited to-morrow by the ordinary rules of descent, and which would produce an inconsistency as to the Place and Precedency? No doubt, if we had been able to discover any terms in the grant importing that it was to him and ‘his heirs whatsoever,’ or to him and his ‘heirs of line,’ that circumstance would have weighed against

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the construction which must necessarily be put upon this part of the grant; the instrument would have been clear; and therefore my learned friend tried to say that there might have been a separate grant of the Earldom of Monteith."

Mr. Knight Bruce. — "That there must have been a separate grant of the Earldom of Monteith."

Lord Advocate. — "And that the recital of the separate grant of the Earldom of Monteith clearly made out, unless the Crown or the advisers of the Crown were mistaken, that the Earldom of Monteith must have been granted to heirs general; and they say it must have been granted to heirs general, because in the instrument of 1633 the Crown refers to the particular grant of 1428, granting the Earldom of Monteith to Malise and his heirs, without any other limit.

"But your Lordships unfortunately have before you this Charter of 1428, and it is produced by the Claimant, who was quite right in producing it, for the withholding it would have been a fraud on the House; but he was obliged to produce it because the Patent on which he proceeds so refers to it, that it was necessary to make that instrument understood. Turning to pages 6. and 7. of the Printed Evidence, your Lordships have this deed referred to as a deed

in favour of Malise and his heirs.¹ Now what are the words here? It is regarding Craynis and certain other lands: ‘Cum pertinenciis in liberum comitatum de Menteth constituimus ordinamus et de novo erigimus ceteras autem terras que de dicto comitatu ante hanc nostram concessionem ab antiquo fuerant et que in presenti carta nostra non continentur per expressum nobis et successoribus nostris * * * * tuum tenore presencium reservamus Tenendas et habendas omnes et singulas prenominatas terras cum pertinenciis prefato Malizeo heredibus suis masculis de corpore suo legitime procreatis seu procreandis.’ Thus your Lordships see that we have a deed referred to by which the Crown recites a certain grant to Malise and his heirs male.”

Mr. Knight Bruce. — “Malise Earl of Monteith.”

Lord Advocate. — “Clearly, Malise Earl of Monteith and his heirs. On referring to that Charter, it is a Charter only of lands. I admit

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¹ The Charter of the lands of Craynis was not produced on the part of the Claimant *because* he considered it to be the Charter referred to in the Patent of 1633, but because he felt it right to produce every document relating to the case. He contends, on the contrary, that the Charter referred to in the Patent of 1633, was *another* and *distinct* instrument from the Charter of the lands of Craynis, and which instrument is not extant.

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that ; but on referring to that Charter of the lands of Craynis you find the heirs mentioned are the heirs male, 'hæredibus suis masculis.' How do my learned friends get out of this difficulty, for I think they saw it? It is plain, from the long argument, both to-day, and when the case was opened, that they were aware of it. They say there must have been another grant ; that this Charter of Craynis was not a grant of the Earldom of Monteith, only a grant of certain lands ; and that there must have been a separate grant of the Dignity, which they say is lost ; that this is not the first erection of the Earldom. Their observation is quite true : there must have been a separate grant of the Earldom of Monteith, and that grant is lost, or at least has not yet been found ; but this grant is to Malise Earl of Monteith, of certain lands which had originally constituted part of the Earldom ; it creates lands anew into an Earldom in favour of Malise and his heirs male. It is quite true that there must have been a separate grant of the Honour¹, and probably a separate grant of land. Whether there was a grant of the Honour separately from a grant of land cannot be ascertained ; but this is a new erection of certain lands which formed a

¹ It is to this supposed separate grant of the lands, and not to the Charter of the lands of Craynis, that the Patent of 1633 is presumed by the Claimant to refer.

part of the Earldom of Monteith, and there might have been a separate grant of the Earldom connected with other land; but this is an erection of lands into an Earldom to the Earl who had the rest of the Earldom. It was a grant of certain lands belonging to the original Earldom, a grant of them anew, having been lost to the Crown; and they are granted to him and his heirs male ‘procreatis seu procreandis.’ How will your Lordships presume that it was an erection of lands into an Earldom, with a distinct series of heirs than those called to the Honour, the purpose of it being to create an Earldom for an Earl who had no Earldom at the moment, and the lands being to go to the heirs of the Earldom?¹

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“There was nothing in the case of Sutherland inconsistent with this. It was very strongly argued in the case of Sutherland, and afterwards in the case of Lovat, that where the Patent of the Honours and of the lands differed, if a sufficient reason did not appear to the contrary, it must be according to the Patent of the Honours; and that for which I contend is not at all discountenanced by any thing which took place in the case of Sutherland. In the case of Sutherland the thing was clear, notwithstanding the Charter of land; because a female had taken the Honour before that Charter,

¹ See the case of the Earldom of Buchan, p. 87. ante.

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and that was the ground on which the decision went. But observe what is said about the Earldom of Monteith, in this book of Scotstarvet which has been referred to by my learned friend¹: ‘ Robert the Second by two diverse Charters, one dated at Edinburgh, 19th June the first year of his reign, the other at Perth, 3rd July the said year, disposed the said Earldom, with all annexes and pertinents thereof.’ That is the Earldom of Strathern. ‘ And William the foresaid Earl of Monteith as heir foresaid had good right to the said Earldom yet he for the humble respect which he carried to our Royal and Sacred Person by his letters of renunciation dated 22nd January 1630 registrat 3rd March thereafter renounced all right and title he had or might pretend to the said Earldome in favour of us and our successors, reserving to the said Earle the lands and barony of Kilbride and others mentioned in the said renunciation with this express provision that the foresaid renunciation should not be prejudicial to him and his foresaids of their right and dignity of blood belonging to him as heir of lyne to the said David Earl of Strathern as the said renunciation in itself more fully purports and we earnestly willing that the foresaid William Earl of Monteith his heirs male and successors may enjoy the right and title of the Earldom of Strathern and succeed to the same Title Place

and Dignity due to them be the said two Charters and infeftments foresaid granted be the said King Robert the Second to the foresaid David Earl of Strathern and his heirs of the said Earldom in so far as concerns the Title Place and Precedency due to them as Earls, Therefore wit ye us to have ratified and approven and be the tenor hereof ratifies and approves the foresaid Title Honour Dignity and Place of Earl to the said Earl of Monteith his heirs male and of tailie who shall henceforth be styled and called Earls of Strathern and Monteith in all time coming.' Now, my Lords, we have nothing to do here with the Earldom of Strathern, which is quite out of the question ; but here in the instrument of 1631, which is referred to by my learned friend, you find the Crown granting this Title of the Earldom of Monteith, with all the Dignity, Title, and Honour, and Place of Earl, to the Earl and his heirs male."

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Mr. Knight Bruce. — " It does not grant the Earldom of Monteith."

Lord Advocate. — " The foresaid Title, Honour, Dignity, and Place of Earl, to the said Earl of Monteith, his heirs male and of tailie, who shall henceforth be styled and called Earls of Strathern and Monteith in all time coming."

Sir Harris Nicolas. — " That is the Earldom of Strathern."

Lord Advocate. — " The question is, what is

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the presumption with respect to the destination of the Earldom of Monteith? In the absence of any Patent of the Honour, you have a Patent creating an Earldom to the Earl, which was lack-rented by the very iniquitous proceedings of the Scotch Court—he was an Earl without an Earldom.¹ The Crown had granted the lands, not to Malise and his heirs general, but to Malise and his heirs male. But are your Lordships prepared to say, (and this is the only remark I shall trouble you with upon it, unless your Lordships wish it to be argued at greater length), are you prepared to say that this Charter of 1428 is not that which is to fix the construction of the word, independently of any question arising upon the context of the special Deed referred to? This Charter of 1428 is referred to in the Deed of 1633²: there is no doubt that it is referred to as the Deed by which certain lands were erected into an Earldom in favour of Malise and his heirs? Surely, the meaning of the Deed having reference to the heirs, they must be the heirs specified in the destination of the Deed referred to; that is, Malise and his ‘heirs male.’ Then, the Crown having referred to this Patent, are you to suppose that

¹ The Lord Advocate appears here to allude to the resumption of the Earldom of Strathern by King James the First.

² This is denied by the Claimant. See the former notes.

the Crown has made a mistake, that it intended the Honours to have gone to Malise and his heirs general, whereas it appears to have been in favour of Malise and his heirs male? I think that cannot be held. I do not wish to be considered as arguing this case adversely. I have pointed out the difficulties which occur to my mind. I do not know that that recital would alter the matter; there is no matter of law here. The Crown uses the word 'heirs,' but it uses it referring to the deed: it is quite plain that it is as if the Crown had recited, 'Whereas by a certain Charter granted by our predecessor James the First, King of Scotland, he erected the lands within Monteith, in the said Charter mentioned, into a whole and entire Earldom, to be called in all future time the Earldom of Monteith, in favour of our very trusty and well-beloved councillor Malise Earl of Monteith and his heirs male.' It is clear that 'hæredibus suis,' with reference to that, must be read 'his heirs male.' Then, if you find the Patent in 1633 referring to the original Patent to Malise and 'his heirs,' not saying 'heirs of line,' but 'heirs male,' though this subsequent Patent may, in referring to the succession, describe the heirs simply as 'heirs,' it is in my opinion clear, that the declaration that the new Earldom shall be united to the old, or the old to the new, with the Precedency of the old, must be considered as referring, in the con-

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struction of the word 'heirs,' to the description of heirs in the former Patent, namely, to Malise and his 'heirs male,' and that this must be held to be to William and all his, 'heirs male.'¹

"These are the observations which mainly occur to me. It is sufficient if I have so far explained myself to present the question for your Lordships' consideration. At least, I have no desire to interfere further. I know my duty here is rather as an adviser of the House, than as occupying the place of an adversary in the matter; and, having brought the matter before your Lordships, I leave it to your discretion, not proposing to argue it at length, but hoping your Lordships will see that I have been justified in interfering."

The Committee was then adjourned to Thursday the 15th of August, on which day the Committee again met; and the Counsel for Mr. Barclay Allardice stating that they wished to produce other documents in support of his Claim, leave was given them to do so; and the further proceedings were adjourned to the next session of Parliament.

¹ According to this argument, the Earldom of Airth must have been granted neither to the *heirs general*, nor to the *heirs male* of William Earl of Monteith, but to the "*heirs*" mentioned in the Charter of the lands of Craynis, *id est*, to the *heirs male of the body of Malise Earl of Monteith*, who lived two centuries before the date of the Patent. See the remarks on this point in pp. 101—105. ante.

In this stage of the proceedings, it was considered advisable, with the view of laying all the facts of his case before the House, that Mr. Barclay Allardice should Claim the EARLDOMS OF STRATHERN and MONTEITH, as well as the EARLDOM OF AIRTH.

Mr. Barclay Allardice's Claim to the Earldoms of Strathern and Monteith.
August, 1840.

On the 4th August, 1840, the following Petition was accordingly presented to Her Majesty ; and it having been, by Her Majesty's command, referred for the consideration of the House of Lords, the House referred it to the Committees for Privileges.

“ TO THE QUEEN'S MOST EXCELLENT MAJESTY.

Petition to the Queen.
August, 1840.

“ The Humble Petition of ROBERT BARCLAY ALLARDICE of Urie and Allardice,

“ SHEWETH,

“ That, in 1834, the Petitioner presented his Petition to His then Majesty, claiming the Scottish Earldom of Airth, under Letters Patent granted by King Charles the First to William seventh Earl of Monteith, dated at Whitehall, the 21st day of January, 1633, and sealed at Edinburgh the 28th day of March thereafter ; and the said Petition, having been referred, in the usual manner, to the House of Lords, and by their Lordships to the Lords' Committees for Privileges, came on for hearing on the 9th day of July, 1839.

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Petition to the
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“That the Petitioner then produced the Patent under which he claimed, and he proved by evidence, then admitted by the Counsel for the Crown to be satisfactory,—*First*, that William Earl of Monteith, who had been created Earl of Airth by the Patent before mentioned, had an only son, John Lord Kinpont, who died before him: *Secondly*, That John Lord Kinpont had issue one son, William, and two daughters, Mary and Elizabeth: *Thirdly*, That this William succeeded his grandfather in the Earldoms of Monteith and Airth, and died without issue: *Fourthly*, That the Petitioner is the lineal heir descended of the body of the Lady Mary, one of the daughters of the said John Lord Kinpont, who intermarried with Sir John Allardice of Allardice, and that the issue of the Lady Elizabeth, the other daughter, are extinct; the Petitioner, therefore, claimed the Earldom of Airth, as the lineal heir of the body of William seventh Earl of Monteith, to whom the Patent of Earl of Airth had been granted in manner before mentioned.

“That the Petitioner had always considered himself entitled to claim also the more ancient Dignities enjoyed by his ancestors; but he had been advised that it was more expedient for him, at first, to claim the most recent of these Titles — the Earldom of Airth — of which he could produce the Patent, and to establish his right to that Dignity, before claiming at once these

more ancient Honours, which must necessarily have led him into a wider field of evidence.

“That the Petitioner, having obtained leave from the House of Lords to present an Additional Case, in regard to his Claim to the Earldom of Airth, is now advised that he ought also to bring forward his Claims to the more ancient Earldoms of Strathern and Monteith, which were enjoyed by his ancestors for several centuries; and with this view the present Petition is humbly submitted to Your Majesty.

Mr. Barclay Allardice's Claim to the Earldoms of Strathern and Monteith.

Petition to the Queen.
1840.

“That Robert the Second, King of Scotland, succeeded his uncle, King David the Second, in 1371: he was the first King of the race of Stuart, and at the time of his succession was of mature age. By Elizabeth Muir, daughter of Sir Adam Muir of Rowallan, he had a numerous progeny. In 1347 he obtained a dispensation from the then Pope, Clement the Sixth, for his marriage with the said Elizabeth Muir; and this dispensation contained a clause legitimating their children. After the death of Elizabeth Muir, Robert intermarried with the Lady Euphemia, sister of the then Earl of Ross; and of this second marriage there were issue two sons; the eldest of them being David, afterwards David Earl of Strathern, the direct ancestor of your Petitioner, and the younger, Walter, afterwards Earl of Atholl.

“That, before his Accession to the Throne,

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Robert had enjoyed the Title of Earl of Strathern; and it appears, by authentic instruments remaining upon record in Scotland, that among those who took the oaths of homage and fealty to him, on the day after his Coronation, was 'David Senescallus filius Regis junior Comes de Stratheryn.'

"That, in an Act for the Settlement of the Crown on the descendants of Robert the Second, also remaining upon record in Scotland, the said David Earl of Strathern, therein described as the son of the King by his second wife, is called to the Succession immediately after the sons of the first wife.

"That it does not appear, by any thing upon record, in what manner, or by what form of investiture, Earl David had been created Earl of Strathern; but numerous Charters were granted to him by his Father, of lands, castles, and regalities, to hold to him and the heirs to be procreated of his body.

"That David Earl of Strathern died, leaving an only child and heiress, Euphemia, who thereupon became, by descent, Countess of Strathern, and intermarried with Sir Patrick Graham, who, in her right, became Earl of Strathern.

"That the said Patrick and Euphemia, Earl and Countess of Strathern, had a son, Malise Earl of Strathern, who became, under that name, one of the hostages to the Crown of England on

the release of his kinsman, James the First, King of Scotland, from his long captivity in England.

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“That, while Earl Malise was thus absent in England, King James, from some unknown cause, saw fit in 1427 to grant, or assume to grant, the Title of Earl of Strathern to his uncle Walter, Earl of Atholl, the younger son of the second marriage of King Robert the Second, and grand-uncle of Earl Malise, for life ; and he granted to the said Malise Earl of Strathern the title of Earl of Monteith ; the mode of conferring which Dignity has not been discovered from any thing remaining on record, to which the Petitioner has had access. But it appears that King James then, or about that time, seized the great possessions of the territorial Earldom of Strathern, and by a Charter in 1427 erected certain lands, termed the lands of Craynis, into a territorial Earldom, to be called the Earldom of Monteith, to hold to the said Earl Malise and the heirs male of his body, and failing them, to return to the Crown ; but which Malise, as before mentioned, was then already Earl of Monteith, in Title and Dignity, and is so called in that Charter.

Petition to the
Queen.
1840.

“ That the Title and Honour of Earl of Monteith had already been enjoyed by different families, and had some time before been carried by Margaret, who was in her own right Countess of Monteith, to her husband, Robert, third son of King Robert the Second, of his first marriage

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(also grand-uncle of Earl Malise), who in her right became Earl of Monteith; this Robert afterwards became Regent of the Kingdom, and Duke of Albany; and on the forfeiture of his son, the Regent Murdach, the Title again became vested in the Crown.

“ That, while Earl Malise remained a hostage in England, those lamentable events belonging to history occurred, which resulted from the doubts then existing, or suggested, as to the marriage of Elizabeth Muir, and which appear to have been called to the attention of King Charles the First at a much later period, as after mentioned: King James the First of Scotland was assassinated, and his uncle, Walter Earl of Atholl, and others of his near kinsmen, perished miserably on the scaffold.

“ That the said Malise, then described as Earl of Monteith, appears to have remained in England (where he married) till 1453. Upon his death he was succeeded by his grandson, Alexander Earl of Monteith, and the Title was enjoyed for several generations in a direct course of lineal descent from father to son, down to William the seventh Earl of Monteith. It seems probable that after the events of the reign of James the First, which have been alluded to, Earl Malise and his successors abstained from using the Title of Earl of Strathern, to which it is submitted they were clearly entitled, content-

ing themselves with their undisturbed enjoyment of the rank and dignity of Earl of Monteith.

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“That the said William seventh Earl of Monteith, in the reign of King Charles the First, held the offices of President of the Council and Justice-General in Scotland ; but, conceiving that his ancestors had been unjustly treated in respect of their ancient honours and estates, he, under the sanction of Sir Thomas Hope, then His Majesty's Advocate, obtained three services in the Court of the Sheriff of Edinburgh, on the 5th of May, 1630, which were duly retoured to the Chancery in Scotland : one, as nearest and lawful heir to David Earl of Strathern, his ‘abavus attavi ;’ another, as nearest and lawful heir to Patrick Graham, Earl of Strathern, his ‘proavus attavi ;’ and the third, as nearest and lawful heir to Malise Earl of Menteth, his ‘proavus abavi.’

Petition to the
Queen.
1840.

“That, at that period, historical doubts existed, which have since been clearly removed, as to the validity of the marriage of Robert the Second to Elizabeth Muir, of which marriage King Charles was descended ; and on account of these doubts, and of some imprudent speeches of the then Earl of Monteith, intimating that King Charles only held the Crown by his sufferance, he was deprived of his offices, and after several transactions with the Crown it was deemed fit to grant him a new Title, namely, the Earldom of Airth, which had not the same associations

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connected with it that belonged to the Titles of Strathern and Monteith, which were generally known to have been held by those who were descended of King Robert the Second, through his marriage with Euphemia Ross, the validity of which marriage had never been disputed.

“That none of the transactions which took place between King Charles the First and William seventh Earl of Monteith, the ancestor of the Petitioner, did in any way deprive him of his right of blood to the ancient Titles and Dignities of Earl of Strathern and of Earl of Monteith, as undoubted heir of line in those ancient Earldoms; and the rights of the said William Earl of Monteith have descended to the Petitioner, who has clearly established that he is the nearest and lawful heir of line descended of the body of the said William seventh Earl of Monteith, who was the nearest and lawful heir of line duly served and retoured to the said David and Patrick, Earls of Strathern, and to the said Malise Earl of Monteith.

‘Your Petitioner therefore humbly prays, that it may be adjudged and declared that the said Titles, Honours, and Dignities of Earl of Strathern, and of Earl of Monteith, which were enjoyed by his ancestors, of whom he is the lineal heir and representative, do now of right belong to the Petitioner.

“And your Petitioner will ever pray, &c.

“R. BARCLAY ALLARDICE.”

Appendix.



Appendix.

No. I.

ROYAL CHARTER OF THE EARLDOM OF STRATHERN, DATED 19th JUNE 1371.

[Register of the Great Seal of Scotland, No. 310., Printed volume,
p. 89.—Referred to in p. 9.]

ROBERTUS Dei gr̃a Rex Scottoz̃ Oñibz̃ tē. Sciatis
q̃ concessim⁹ Daudid Senescallo militi cōiti de Stathne
filio ñro carissimo, cōitatum de Strathne cū ptiñ Te-
nend̃ t̃ hñd̃ sibi t̃ hēdibz̃ suis in oñibz̃ t̃ p̃ oñia jux^a
formam t̃ tenorem carte sⁱ exinde facte, cum adiciōe
subscripta, q̃ ip̃e t̃ hēdes sui ip̃m cōitatum hēant t̃
teneāt t̃ possideant ppetuo in libā Rega^{te}, cum feodis t̃
forisfacturis t̃ cū oñibz̃ aliis liber^{bs} cōmo^{bs} ay^{tis} t̃ iustis
ptiñ quibuscūq̃, que ad libām Rega^{tem} ptinent seu de-
bent sc̃dm̃ Regni leges t̃ consuetudies ptiñ adeo libe
qⁱete plenarie integre t̃ honorifice in oñibz̃ t̃ p̃ oñia,
sicut q^ond̃ Malisius comes de Strathne ṽl aliquis alius
comes eiusd̃ ip̃m cōitatū cū ptiñ aliquo tempore libi⁹
quieci⁹ pleni⁹ integrei⁹ t̃ hoñ iuste tenuit t̃ possedit.
Quare oñibz̃ t̃ singlis cōitatus p̃dci ac aliis quoz̃ iñest
vel iñesse poñit dam⁹ p̃ nobis t̃ hēdibz̃ ñris tenore
p̃nciū in mandatis q̃ dēo cōiti t̃ heredibz̃ suis in hiis
que ad libām Rega^{tem} ptinēt r̃ndeant put ad ip̃os t̃ ad
ip̃oz̃ q̃m̃t̃ ptinet faciant ab aliis futuris temporibz̃ re-
sponderi. In cui⁹ rei tē Testibz̃ tē apud Edýnburgh,
decio nono die mens̃ Junii, anno regni ñri primo.

No. 1.

No. II.

ROYAL CHARTER OF THE EARLDOM OF
STRATHERN, DATED 3rd JULY 1371.

[Register of the Great Seal, No. 294., Printed volume, p. 85.—
Referred to in p. 10.]

No. II.

ROBERTUS ꝛc omibꝫ ꝛc. Sciatis nos dedisse ꝛc
David Senescall militi Comiti de Strathne filio nro
kmo Comitatu de Strathne cum pꝛ Tenend ꝛc hnd s'
et heredibꝫ suis in omnibꝫ ꝛ p omnia jux^a formam ꝛ
tenorem carte s' exinde confecte et adeo libe ꝛ quiete
plinarie integre ꝛ honorifice in omibꝫ ꝛ p oia sicut
quondꝫ Malisius Comes de Stathne vel aliquis alius
comes eiusdm ipm Comitatum cu pꝛ in aliquo tēpe
libius ꝛ quiecius iuste tenuit ꝛ possedit cu addicōne
subscripta q ipse ꝛ heredes sui ipm Comitatu habeant
teneant ꝛ possideant ppetuo in liba Regalitate cum
feodis ꝛ forisfact ꝛ cum placitis quatuor punctoz corone
nre libere ꝛ quiete ꝛ cum omibꝫ aliis libtatibꝫ comodi-
tatibꝫ aisiamenꝫ ꝛ iustꝫ ptineꝫ quibuscūqꝫ que ad libam
Regalitatem ptinēt seu debent scdm Regni leges ꝛ con-
suetudines ptinere. Q're omibꝫ ꝛ singlis comitatꝫ pꝛdci
ac aliis quoz intest vel intesse polit Damꝫ p nob ꝛ hed
nris tenore ꝫncium in mandatis q dco comiti ꝛ hedibꝫ
suis in hiis que ad libam Regalitꝫ ptinent Respondeant
prout ad ipos ꝛ ipoz quēlibꝫ ptinent faciant ab aliis
futuꝫ tempibꝫ Responderi In cuiꝫ rei ꝛc. Testibꝫ ꝛc
apud Pthꝫ ꝛcio die Julii anno regni nri primo.

No. III.

ROYAL CHARTER OF THE EARLDOM OF
STRATHERN, DATED 3rd JULY 1371.

[Register of the Great Seal, No. 303., Printed volume, p. 86.—

Referred to in p. 10.]

ROBERTUS Dei grā Rex Scottorum, Omībz probis
hoīmbz tocius terre sue cīcīs ⁊ laicīs Salūm. Sciatis
q̄ concessim⁹ Dauid Senescalli militi comit̄ de Strathne
cum p̄tīn. Tenēd ⁊ hnd sibi ⁊ heredibz suis in omībz
⁊ p omīa jux^a formā ⁊ tenorem carte sibi exinde
cōfecte et adeo libere ⁊ quiete plenarie integre ⁊ hono-
rifice, in omībz ⁊ p omīa, sicut quondā Malici⁹ Comes
de Stathne vel aliquis alius cōes eiusdem ip̄m Cōita-
tum cū p̄tīn aliquo tempore libi⁹ quieci⁹ pleni⁹ integ⁹
⁊ honorificencius iuste tenuit seu possedit, cum ad-
diçōne subsc̄pta Q' ip̄e ⁊ hedes sui dēm cōitat̄ ac
omēs alias ⁊ singlas terras tenandias ⁊ tenemēta cū
p̄tīn que tenent^r ⁊ tenebant^r antiquit⁹ de ip̄o comitatu
vbicūq, infra Regnum n̄m hēat teneāt ⁊ possideant
ppetuo et in libā Regalitate cum feodis ⁊ forisfacturis
et cū placitis quatuor punctorū corone n̄re, et cū omībz
aliis ⁊ singulis libtatibz cōmoditatibz aysiamētis et
iustis p̄tīn quibuscūq, que ad libā Regalitatē p̄tinēt
seu debent sc̄dm Regni leges et consuetudines p̄tinere
Quare omībz ⁊ singlis cōitatus p̄dci ac aliis ⁊ singlis
quoq, in̄test vel in̄lesse potit, dam⁹ p nobis ⁊ hēdibz
n̄ris tenore p̄nciū in mandatis q̄ dēo cōiti ⁊ hēdibz
suis in hiis que ad libā Regalitatē p̄tinēt respondeant,
⁊ put ad ip̄os ⁊ ip̄oq, quemlibz p̄tinēt faciant ab

No. III.

No. III.

aliis temporibz fut'is responderi. In cuj^o rei testiōm
pnti carte nre Sigillum nrm pcpim^o apponi. Testibz
veñ in Xpo p'ribz Wifmo t Patricio Sēi Andree t
Brechiñ eccliaž Eps Joñne p'mogēito nro cōite de
Carryk senescallo Scocie, Rohto Comite de Meneteth
Alexo Senescalli filiis nris karissimis, Wifmo Comite
de Douglas Joñne de Carryk canonico Glasgveñ Can-
cellario nro, Alexo de Lýndesaý Rohto de Erskýne
militibz cōsanguineis nris, Apud Pth, 7cio die mensis
Julii, regni nri anno primo.

No. IV.

ROYAL CHARTER OF THE EARLDOM OF
STRATHERN, DATED 19th OCTOBER 1372.

[Register of the Great Seal, No. 304., Printed volume, p. 87.—
Referred to in p. 11.]

ROBERTUS Dei gra^a Rex Scottorū Omībz probis
hoīmbz tocius tre sue cīcis ⁊ laicis Salūm. Sciatis q
concessim⁹ Daudid Senescalli militi filio nro carissimo
Comitatum de Strathne cū ptiū, Tenendū ⁊ hnd sibi
⁊ hēdibz suis in omībz ⁊ p omīa jux^a formā ⁊ tenorem
carte sibi exinde confecte et adeo libe quiete plenarie
integre ⁊ honorifice in omībz ⁊ p omīa, sicut quondm
Malisius Comes de St^athne vel aliquis alius Comes
eiusdm ipm Cōitatū cum ptiū aliquo tempore libius
quēcicus pleni⁹ integri⁹ ⁊ honorificencius iuste tenuit
seu possedit, cū addicōne sbscripta Q' ipe ⁊ hēdes
sui dcm Comitātū ac omēs alias ⁊ singlas tras tenandias
⁊ teneūta cum ptiū que tenent^r ⁊ tenebant^r antiquit⁹
de ipso cōitatu vbicūq, infra Regnū nrm hēant teneant
⁊ possideāt ppetuo in libera Regalitate cum feodis ⁊
forisfactur^r ⁊ o placitis q^aor pūctoꝝ corone nre ⁊ cū
omībz ⁊ singlis honoribz libtatē cōmodū ay^{tis} ⁊ iustis p^r
q'buscūq, q^e ad verā Regali^r ptinēt seu debent scdm
Regni nri leges ⁊ cōsuetudies ptinere: Reddendo ipe
Daudid ⁊ hēdes sui nobis ⁊ hēdibz nris de dco cōitatu
cum ptiū vnū par calcariū deauratoꝝ nōie albe firme
apud Dulye, ad festū Naītatīs Bī Johis Bapt ānu-
tim si petatur, tantū pro warda releuio maritaggio ac
omībz aliis ⁊ singlis ſuiciis secularibz exaccōibz seu
demanda que de dco cōitatu exigi poſunt aut requiri,

No. IV.

No. IV.

Quare om̃ibz ⁊ singlis cōitatus p̃dēi ac aliis ⁊ singlis
 quoz̃ int̃est vel int̃esse pot̃it, dam⁹ p nobis ⁊ h̃edibz
 ñris tenore p̃nciū in mandatis q̃ dēo cōiti ⁊ h̃edibz
 suis in hiis que ad lib̃am Regalit̃ē p̃tinēt respondeāt
 et put ad ip̃os ⁊ ip̃oz̃ quēlibz p̃tinēt faciant ab aliis
 fut̃is temporibz responderi. In cuj⁹ rei testiōm p̃nti
 carte ñre Sigillum ñrm apponi p̃cipim⁹ Testibz veñ
 [in Xp̃o p̃ribz, Wiſſmo ⁊ Patricio S̃ci Andree ⁊
 Brechiñ] eccliaꝝ Ep̃is Johe p̃mogēito ñro cōite de
 Carryk señ Scoč Robto comite de Fiff ⁊ de Mene-
 teth Alexo Senescalli filiis ñris carissimis, Wiſſmo
 cōite de Douglas Joñe de Carryk canonico Glasgveñ
 Cancellario ñro Robto de Erskýne ⁊ Hugone de Eg-
 lyntoñ militibz consang̃neis ñris, apud Methfen,
 decio nono die mensis Octobris, anno regni ñri
 secundo.

No. V.

ACCOUNT OF THE EARLY HISTORY OF
THE EARLDOM OF MONTEITH.

[Referred to in p. 18.]

MAURICE EARL OF MONTEITH, who flourished in the reigns of William I. and Alexander II., inherited the Earldom from Gilchrist Earl of Monteith, temp. Malcolm IV., and he from Murdoch Earl of Monteith, temp. David I.; but the precise line of descent is unknown. Maurice Earl of Monteith left two daughters, his co-heirs, the eldest of whom conveyed the Earldom to her husband, WALTER CUMYN, about the year 1230, who died in 1258, without issue male. His widow remarried Sir John Russell, an English Knight, in consequence of which the Earldom was claimed by WALTER STEWART in right of his wife, the younger sister of the Countess, and he was allowed the dignity. The Countess appealed to the Pope, and some remarkable proceedings took place; but Stewart continued to hold the Earldom. In 1273 an attempt was made to revive the controversy by William Cumyn, who had married the daughter and heiress of the Countess of Monteith, which was terminated in 1285 by a decision of Parliament, that the lands of the Earldom should be divided between Cumyn and Stewart, but that the latter should retain the dignity.

WALTER STEWART EARL OF MONTEITH, died about 1295, leaving several children. His son and heir,

ALEXANDER, SIXTH EARL OF MONTEITH, died before 1320, and was succeeded by his son and heir,

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EARLDOM OF
MONTEITH.

NO. V.
EARLY HISTORY
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EARLDOM OF
MONTEITH.

ALLAN, SEVENTH EARL OF MONTEITH, who died before 1330, leaving an only child,

MARY, who is supposed to have agreed with her kinsman (but the exact degree of relationship is not known), MURDOCH DE MONTEITH, in 1330, that he should enjoy the Earldom. He was killed in July, 1333, when the said Mary succeeded to the dignity, and became COUNTESS OF MONTEITH. She married SIR JOHN GRAHAM, who, in her right, became Earl of Monteith, and bore that title in May, 1346. He was beheaded by King Edward the Third in 1347, and left issue an only child,

MARGARET, who succeeded to the Earldom, and conveyed it to her husband ROBERT STEWART, third son of King Robert II., afterwards Earl of Fife, Duke of Albany, and Regent of Scotland. Their son

MURDAC, DUKE OF ALBANY, succeeded as Earl of Monteith, but being executed for treason, the Earldom became forfeited to the Crown in May, 1425; and in 1427 it was granted to MALISE GRAHAM EARL OF STRATHERN.—*Douglas' Peerage of Scotland*, ed. Wood, vol. ii. pp. 223, 227., and the *Additional Sutherland Case*, chap. v. pp. 13-18.

Mr. Riddell, in his "Remarks on Scotch Peerage Law," (8^{vo}, 1833, p. 41.) says,

"By some strange fatality, the Earldom of Menteith, like Pandora's box, or any baneful prototype, has always been the forerunner of mischief and contention; and its reputation in this respect has not been confined to our own country, but has extended to England, and even remote regions. In its very infancy, before almost any thing can be gleaned about it, it attracts our notice by a remarkable contest in 1213, between two Sosias, or brothers, 'Maurice, senior,' of Menteith, and 'Maurice, junior,' of Menteith, the first actual possessor

of the Earldom, and the other claiming it '*sicut jus suum*,' which required the interference of the King and Parliament, who, in the above year, confirmed a final treaty betwixt them, by which Maurice, senior, resigns the Earldom to Maurice, junior, on condition of obtaining a provision in land for himself and his daughters. What is also extraordinary, this transaction, which is only for the first time brought forward, was thought worthy of being authenticated by an Inspecimus of Henry III. of England; owing to which circumstance it has reached us through the medium of the English records.¹ Subsequent to this, in 1257, Isabella Countess of Menteith, perhaps the daughter of Maurice, *junior*, after being charged with poisoning her husband, gave her hand to Sir John Russell, an English Knight, which so exasperated the Scotch nobility, that they threw both of them into prison, from which, however, they were at length liberated, and having obtained a sum of money, departed to England. So far Fordun², and there is an original charter extant by '*Dominus Johannes Russellus, et Isabella, spousa sua, Comitissa de Mene-thet*,' to Sir Hugh de Abernethy, of a twenty-pound land in the territory of Aberfule, witnessed by the Earls of Fife, Strathern, Buchan, and Mar³, and other great dignitaries, which, doubtless, has had some connection with these proceedings. In the meantime, Walter Stewart, husband of the younger sister of

No. V.
EARLY HISTORY
OF THE
EARLDOM OF
MONTEITH.

¹ "Patent Rolls in the Tower, London. Full copies of the relative deeds are inserted in the Appendix, No. II. Probably during the ensuing litigation by Countess Isabel, she had required the King of England to certify her titles to the Earldom, that they might be shewn to the Pope."

² Lib. 10. c. 11.

³ Mr. Riddell has given a copy of this Charter in the Appendix to his work. He says, "It is without date, but must have been about the period."

No. V.
EARLY HISTORY
OF THE
EARLDOM OF
MONTEITH.

Isabella, seized upon the Earldom; and then commenced legal proceedings and negociations upon a great scale at Rome, York, and Scotland, and again at Rome, with the aid of the Pope and his Nuncio, &c.¹ In 1273 the controversy was revived at York, and was not finally settled until after a discussion in a full Parliament held at Scone by Alexander III. in 1285, who was obliged to divide the Earldom between two competitors.² Passing over various singularities in its history, its capricious descent, and attainder in the person of Albany, and a new contention between two brothers, Alexander and John, towards the close of the fifteenth century, owing to unequal settlements, that nearly tore the Earldom in pieces³, and suppression of it in the manner shewn, with attendant calamities and mischances, we come to William Earl of Airth and *Menteith*, (for the title had been inauspiciously resumed,) grandson and heir of the Airth patentee. This nobleman in the year 1680 was drawn into some kind of transaction with the Marquis of Montrose, who contrived to acquire for his family the Earl's landed estates⁴; but he even went further, and extended his grasp to the ill-fated dignity of *Menteith*. In the meantime there was demurring and bitter complaints by the Earl to Parliament, who protested against the family of *Menteith* being sunk in that of *Montrose*⁵; while Charles II. was induced to recall the grant of the dignity to the Marquis by a letter that does honour to his memory. The poor Earl, chiefly famous owing to a law-suit with his wife (not inferior

¹ Fordun, Lib. 10. c. 14 and 33.

² Winton, B. 7. c. 10.

³ "The Earldom was ever after much curtailed, and little comparatively remained to the elder branch."

⁴ Reg. Mag. Sig., Lib. 8. 470.

⁵ Act. Parl. V. viii. 257.

in immorality to the ancient Countess), which occasioned vast discussion, and fixed the point as to the reception of female witnesses¹, afterwards died without issue; and for any thing we can see to the contrary, ‘hoc generis fato, quod nostros errat in annos’², the Earldom may still, even in our days, be again the subject of controversy.

“It need hardly be observed, whatever may be the fact in England, that ordinarily, under a grant ‘hæredibus suis’³, a Scotch Peerage descends to heirs-at-law.”

No. V.
EARLY HISTORY
OF THE
EARLDOM OF
MONTEITH.

¹ See Fountainhall repeatedly, “Lady Menteith against the Earl.” The celebrated beau Fielding was in the case.

² “The errant mendicant, William Earl of Menteith, was well known last century, against whom, in 1762, there went forth an anathema of the House of Lords, discharging him from using the title of Menteith until he had established his right. Whatever he may have been, whether the wandering Jew, or however shadowing out his pretensions, he was the first, on the eve of an election, to leave Edinburgh *with his accoutrements*, lest his presence as a Peer, upon such occasion, might be eyed with jealousy.”

³ “Lord Redesdale thought that these words anciently denoted heirs-male; but Sir Harris Nicolas is here at issue with his Lordship.—Lisle Report, pp. 283, 4, &c. and 429.”

No. VI.

REMARKS ON THE MURDER OF
KING JAMES THE FIRST.

[Referred to in p. 21.]

No. VI.
REMARKS ON
THE MURDER OF
JAMES I.

Mr. Fraser Tytler says (History of Scotland, vol. iii. pp. 299, 300.), "Upon the return of the King from his detention in England, and at the time that he inflicted his summary vengeance upon the house of Albany, Sir Robert Graham had been imprisoned, along with the other adherents of that powerful family, but it seems probable that he obtained his liberty, and for a while became reconciled to the Government. Another transaction, however, was at hand, which, it is said, rekindled his feelings into a determined purpose of revenge. This was the seizure or resumption of the Earldom of Strathern by the King. David Earl of Strathern, the brother of the Earl of Athole, was the eldest son of Robert the Second by his second wife Euphemia Ross. He left an only daughter who married Patrick Graham son of Sir Patrick Graham of Kincardine, and in right of his wife, Earl of Strathern, to whose children, as the transmission of these feudal Dignities through females was the acknowledged law of Scotland, the title and estates undoubtedly belonged. James, however, fixed his eyes upon this powerful Earldom. He contended that it was limited to heirs male; that upon the death of David Earl of Strathern it ought to have reverted to the Crown; and that Albany, the Governor, had no power to permit Patrick Graham or his son to assume so extensive a fief, which he resumed as his own. Although, however, he dispossessed Malise Graham the son of the Earl of Strathern, of his lands and dignity, James ap-

pears to have been anxious to remove the appearance of injustice from such conduct and to conciliate the disinherited family. For this purpose he conferred the life-rent of the Earldom of Strathern upon Athole, and he created the new Earldom of Menteith in favour of Malise Graham.

No. VI.
REMARKS ON
THE MURDER OF
JAMES I.

“ This attempt at conciliation, however, did not succeed; and indeed, notwithstanding the disguise which the King threw over it, it is easy to see that his conduct must have appeared both selfish and tyrannical. It was selfish, because from the extreme age of Athole, James looked to the almost immediate possession of the rich Earldom which he had torn from the Grahams; and tyrannical because there appears no ground for the assertion that it was a male fief. Malise Graham was now a youth and absent in England; but his uncle Sir Robert Graham remonstrated, as the natural Guardian of his rights, and finding it in vain to sue for redress determined upon revenge.”

The same view of the subject is taken by Lord Hailes in his account of the Earldom of Strathern (Additional Sutherland Case, cap. v. p. 57.): but it is justly observed by Pinkerton (History of Scotland, vol. i. p. 134.), that “ Robert Graham may have been discontented at this exchange of his nephew’s dignity; but it is not easy to conceive that his wrath upon this account could have excited him to the murder of his Sovereign, and far less that he could have wished to serve the ambition of Atholl, to whom his nephew’s former Earldom had passed.”

That the resumption of the Earldom of Strathern was supposed to have caused the King’s assassination is, however, shewn by the remarkable expression of King James the Sixth whenever solicited to bestow that Dignity, namely, “ that he had nothing else for the murder of King James the First.”



No. VII.

CHARTER OF ERECTION OF THE LANDS
OF CRAYNIS INTO THE EARLDOM
OF MONTETH, DATED 6th SEPTEMBER, ANNO
22 JAC. I., 1427.

[The original Charter, which is in the possession of the Duke of Montrose at Buchanan, was produced in evidence on the claim to the Earldom of Airth before the House of Lords, on the 9th July 1839. —Referred to in p. 24.]

No. VII.

JACOBUS Dei gratia Rex Scotorum omnibus probis hominibus totius terre sue clericis et laicis salutem Sciatis nos dedisse concessisse et hac p̃nti carta nostra confirmasse dilecto consanguineo nostro Malizeo comiti de Menteth omnes et singulas terras subscriptas ṽz terras de Craynis estir Craynis wester Craguthy estir Craguthi westir terras de Glasswerde terras de Drumlaen terras de Ladarde terras de Blareboyane terras de Gartnerthynach terras de Blareruscany terras foreste de Baith le sidis de Lochcon terras de Blaretuchane et de Marduffy terras de Culyngarth et de Frisefleware terras de Rose cum le Cragmuk ̃tras de Inchere terras de Gartinhagil Bobfresle ̃tras de Bouento ̃tras de Downanf et Baleth terras de Tereochane terras de Drumboy terras de Crancafy ̃tras de Achray terras de Glassel et Cravaneculy terras de Savnach terras de Brigend ̃tras de Lonany et Garquhat ̃tras de Drum-anũst terras de Schanghil terras de Ernetly et de Monybrachys terras de Gartmulne et de Ernomul ̃tras de Ernecomy terras de Achmore cum le porte et le inche cum pertinenciis iacentes infra vicecomitatum de Perth Quas quidem terras cum pertinenciis in

liberū comitatum de Menteth constituimus ordinamus
 et de nouo erigimus ceteras autem terras que de dicto
 comitatu ante hanc nostram concessionem ab antiquo
 fuerant et que in p̃nti carta nostra non continentur p̃
 expressum nobis et successoribus nost^{is}
 tuū tenore p̃ncium reseruamus Tenendas et habendas
 omnes et singulas prenominatas l̃ras cum pertinencijs
 prefato Malizeo t̃ heredibus suis masculis de corpore
 suo legitime procreatis seu procreandē forte
 deficientibus nobis et successoribus nostris libere
 reuertendū de nobis et heredibus ñris in liberum comi-
 tatū de Menteth in feodo et hereditate inperpetuum
 per omnes rectas metas suas antiquas uisas
 in boscis planis moris marresiis vijs semitis aquis stagnis
 pratis pascuis et pasturis molendinis multuris et eorum
 sequelis aucupãonibus venãonibz et piscãonibz cū
 fabrilibus et bracinis petariis turbarijs et carbonarijs
 cum curijs eschaetis et curiarū exitibus cum furca et
 fossa sok sak thol theme infangandtheif et outfangand
 theif bondis bondagiis natiuis et eorum sequelis ac
 cum om̃ibus alijs et singulis libertatibz cōmoditatibus
 et aisiamentis ac iustis pertinencijs suis quibuscūq; tam
 non nominatis q̃a nominatis tam sub l̃ra q̃a supra l̃ram
 ad prenominatas l̃ras cum p̃tineñ spectantibus seu iuste
 spectare valentibus quomodolibet in futurum libere
 quiete bene et in pace Faciendo nobis et heredibus
 nostris dictus Malizeus et h̃edes sui masculi de corpore
 suo legitime procreati seu procreandi tres sectas curie
 ānuatim ad tria placita capitalia apud Perth tenenda
 ac wardam releuium et maritagiū cū contigint pro
 p̃dictis l̃ris cum p̃tinencijs vna cū seruitijs debitis et
 consuetis In cuius rei testimonium p̃nti carte nostre
 magnum sigillum ñrm apponi precipimus Testibus
 reuerendo in X̃ro patre Johanne episcopo Glasgueñ
 cancellario nostro Johanne Forestarij camerario nostro

No. VII. Waltero de Ogilvy thesaurario nostro Roberto de Laweđ iusticiario nostro ex parte australi aque de Forth militibus et magistro Wilelmo de Foulis pposito de Bothuile custode priuati sigilli nostri apud Edinburgh sexto die mē̄s Septembris anno regni nři vice-simo secundo.

(Seal attached, but partially broken.)

(On the back.)

Carta Malizeo Grahme.

No. VIII.

INFORMATION OF THE TREW ESTAIT
OF THE BUSSINES OF STRATHERNE,
SIGNED BY SIR THOMAS HOPE, ADVOCATE
TO KING CHARLES THE FIRST.

[The original MS. is in the Charter Chest of Allardice, in the possession of the present Claimant of the Earldoms of Strathern, Monteith, and Airth.—Referred to in p. 32. et seq.]

THE TREW ESTAIT OF THE CLAIME MADE BE THE
ERLE OF STRATHERNE TO THE ERLEDOME OF
STRATHERNE WITH THE COURSE AND PROGRES
USIT BE THE SAID ERLE IN OFFERING TO HIS
MAJESTIE ANE RENUNCIATIOUN OF HIS RIGHT OF
THE SAID ERLEDOME.

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IN Julij 1629 The said Erle Stratherne knowing that be the Act of Prescriptioun made in Anno 1617 thair wer only thretteine yeires grantit for using of Interruptioun, quhilk thretteine yeires wer neir expyrit thair being no moir to rin thair of but till Junij 1630, thairfor the said Erle causit searche his Chartour kist, togidder with the Registers of the great seall, quhairn he fand ane number of old Chartouris grantit to his predecessouris of certaine landis and lordschippis quhair of they wantit possessioun.

Amangis the rest he extractit two Chartouris out of the publik register of the great seall under the subscription of the Clerk of register, quhair of ane grantit be King Robert 2 on 19 Junij and first zeir of his reigne to umquhile David Erle of Stratherne his sone and his aires of the Erledome of Stratherne, with privilege of regality, and the uther be the said King

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Robert 2 on 3 Julij in the said first yeir of his reigne, disposing to the said David Erle of Stratherne his sone and his aires quhatsomever, the said Erledome of Stratherne, with free regality, and als with the four pointis of the Croun.

The said Erle of Stratherne shew his haill evidentis to his Majesteis Advocat, and amongst the rest thir two Chartouris of the Erledome of Stratherne; and desyrit his advyse and Judgment thairanent.

Upoun sicht quhairof his Majesteis Advocat declaired to the said Erle, that the landis containit in the evidentis schawen to him were of two natures; the one being landis pertening to his Majesty in property and annext to the Croun; and the uther landis unannext and pertening to Subjects; and that in his opinioun the said Erle had good ground to proceed in his actioun of Interruptioun for the landis pretening to Subjectis, bot as to the landis annexit to the Croun, and specially these of the Erledome of Stratherne, he was perswaded that his Lo: wald do nothing thairin without first he had acquainted his Majestie.

The said Erle of Stratherne schew himself weill content with the answer maide be his Majesteis Advocat, and declaired that he wald schun all contestatioun with his Majesty anent the said Erledome of Stratherne so far as it was annext property And desyrit only his Majesteis Advocat to acquaint his Majesty with the said Erle his claime, and thairwith to draw up suche ane Renunciatioun thairof in favouris of his Majesty as he wald be ansuerable for his Majesteis security.

And his Majesteis Advocat thinking this ane fair way and fitt for his Majesteis service and security of his Majesteis vassalls of the said Erledome of Stratherne, drew up ane Renunciatioun in the said moneth of July 1629, quhilk the said Erle subscribit and to quhilk

his Majesteis said Advocat was witnes: quhilk renunciatoun his Majesteis Advocat sent up to his Majestie and be letter writtin to his Majesty of dait the 14 day of August 1629 signifiet to his Majesty that he had seine these two Chartouris grantit of the said Erledome of Stratherne to the said umquhile Erle David and his aires quhatsumever without restrictioun to the aires maill of his bodie, albeit be the commoun ressavit opinioun it wes ever holdin that the said Erledome being *feudum masculinum* had returnit to the Croun be the decease of the said Erle David without aires maill of his bodie; And that the said Erle Stratherne, be ressoun of thir Chartouris grantit to the aires quhatsumever, claimit richt to the said Erledome as being lineally descendit of Euphame Countes of Stratherne, the only daughter of the said Erle David, quho maryit Patrik Grahame Erle of Stratherne predecessour to the said Erle of Stratherne quho now is, and be appeirance micht cary ground be law, iff it wer not schawen, quhair the said Erledome was renounced be his predecessouris or excambit be thame, and thairwith acquaint his Majestie with the said Erle his voluntar offer to renunce, quhairupon his Majesties said Advocat had drawn up ane Renunciatioun quhilk wes subscryvit be the said Erle and sent to his Majesty. And his Majesties Advocat affirmed to his Majesty in his said letter that it was ane bussines of that importance that it were not fitt to be neglectit, specially seing the said Erle had offerit to his Majesty ane voluntair renunciatioun.

His Majesty upoun the ressait of this letter, and upoun the humble and voluntar offer of the said Erle, was pleased to accept of the renunciatioun offered; and wrett doun¹ to his Majesteis said Advocat com-

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¹ For a copy of this Letter, see APPENDIX, No. IX.

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manding him to draw up ane perfyte renunciatioun and surrender of all landis of his Majesteis property of the said Erledome of Stratherne comprehendit within the said Erle of Stratherne evidentis, to be signed be the said Erle, and registrat for that effect: And als commanding his Majestys said Advocat to assist the said Erle in all uther his actiouns sa far as lawfully he micht doe; quhilk letter was delyvered to his Majestys said Advocat upon 24 December 1629.

Conforme to this his Majesteis warrand and letter, his Majesteis said Advocat considdering that the renunciatioun already subscriyvit be the said Erle and sent up to his Majestie was become woid of the law, in respect it wes not registrat in dew tyme conforme to the Act of Parliament, thairfor he caused draw up ane new renunciatioun containing ane surrender of the said Erledome of Stratherne, quhilk wes subscriyvit by the said Erle in the moneth of Januar 1630; and quhilk was presentit to the register in dew tyme, and thairefter exhibit be his Majesteis Advocat in presence of the Lordis of Secret Counsall, And delyverit to the Clerk of Register to be keipit for his Majesteis use; quhair-upon act wes tain in presence of the Lordis.

In this renunciatioun thair is ane speciall clause insert for his Majesteis security, that the said Erle of Stratherne obleissis him to obtaine himselfe servit and retouret generall air to the said umquhile David Erle of Stratherne his predecessour; quhilk claus wes insert be his Majesteis Advocat of certaine knowledge, in respect the said renunciatioun without it wald have bene woid in law; lykas his Majestys said Advocat urged the said Erle to raise breives for serving of him air to Erle David, to this effect that the said renunciation micht be valid.

And becaus the said Erle of Stratherne wes called for be his Majesty to Court in the moneth of Marche

1630, quhilk wes about two moneth after the subscriyving of the said renunciatioun; And that his Majesteis Advocat thocht it ane prejudice to his Majesty to have the said Erles service differred till his returne, thairfor he urged the said Erle befor his pairting to give ordour that the saidis breives nicht be raised and servit albeit in his absence; quhilk wes done in the moneth of Aprill 1630, the said Erle being absent at Court; and quhilk service his Majesteis said Advocat caused to be retoured to the Chancellarie; be the quhilk service and retour it is found that the said Erle of Stratherne is narrest and lawfule air to umquhill David Erle of Stratherne, as being lineally descendit of Euphame Stewart Countes of Stratherne, the only dauchter of the said umquhile Erle David; swa that quhatsumever wes done in that bussines, wes done both with fidelity and cair to see his Majesty fully and perfytlie secured from all actioun quhilk the said Erle or his aires nicht pretend to the said Erledome of Stratherne or ony pairt thairoff; and thair is no Advocat of skill and knowlege of the lawes that will tak upon his conscience to affirme that his Majestie could be securit be the said renunciatioun, except the said Erle had bene servit air to the said Erle David his predicessour.

And this is the trew and simple estait of the bussines as it wes actit and done, and quhilk in no sort hes or can prejudice his Majestie in honour or benefit; but tendit and tendis to his Majesteis full security of the landis of the said Erledome of Stratherne, notwithstanding quhatsumever calumnies or malicious informatioun maide in the contrary.

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No. IX.

A TRUE RELATION OF WILLIAM EARLE OF MONTEATH'S AFFAIR CONCERNING THE EARLDOME AND TITLE OF STRAITH-ERNE, ACTED BE SIR JOHN SCOT OF SCOTSTARVET¹, IN THE REIGNE OF KING CHARLES THE FIRST, VINDICATING SIR JOHN FROM THE ASPERSIONS LAID UPON HIM BY MR. SANDERSON, IN HIS HISTORY OF THE LIFE OF THE SAID KING.

[From a contemporary MS. in the possession of Captain John Graham of Duchray. — Referred to in p. 33. et seq.]

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His Majestie having made Sir William Alexander Secretary for the Scots affairs, and he having a desire to bring in some of his confident friends to be Councelors, thereby to strengthen himself at home, named the Earle of Monteath; but finding the King averse therefra, by his letter he entreated Sir John Scot to assist him in that purpose, who having written in a postscript to the said Secretary, that he thought it was the fittest way to curb the grandur of the present rulers, to add to that number some of the old Nobility and make them Councelors, thereby to make ane equilibrium in the state, nameing Monteath as a fitt person for that charge; which Letter being shewn to his Majestie, he gave order to write to his Council in Scotland to assume him in that number, which accordingly was done Secratarys

¹ Director of the Chancery.

..... he desired Sir John for his letter of his Majestie, by whose advice he was diverse moneths governed, and advised to go up to Court himself to give his Ma^{tie} thanks for his favour. Which having done, and having gotten Sir John's commendatory letter to his friend Mr. Maxwell, he was by Mr. Maxwell brought in such credit with the Duke of Buckingham, that in a few years he attained to great honour and chief places, when they altered or when they vacked, was made a Lord Chief Justice, President of the Council, and one of the Lords of Session and Exchequer. At his return, Sir Thomas Hope, seeing him so far in favour with his Majestie, offered him his service, telling him that he behoov'd to be ruled only by his Council, and quyt any farder communicating of affairs with Sir John. Whereupon in the Council house they had some cross words, and within some few days thereafter he desired the Earl of Buckleugh at supper to tell Sir John that he should break his neck. The Earl refused the message, but sent him privately word by Mr. Lawrence Scot, the first day that he was admitted a Lord of Session, to beware of the Earle, who he found to be his small freind, who not long thereafter, by his credit with the King, obtained warrand upon sinistrous information, as how being made Lord of the Session that he should be removed from his place of Secret Council. The same day he receaved his message from Buckleugh, he called to mind that at his being in England he had caused coppie a paper which was given him by the Earle of Seaforth, containing a brief information concerning the Earldome of Straitherne, sent to the Earle of Tullibardine by James Murray, shewing that the King had wronged himself in granting that style to any subject, which paper he made the ground work of his subsequent accusation.

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THE DEDUCTION OF THE PRESENT STATE OF THE
EARLDOME OF STRAITHERNE.

When and in what Kings tyme Straitherne was erected into ane Earldome I cannot perfectly designe. Allways the first notable race of the Earles thereof was that of the Foreteiths of the whilk was Gilbert Count palatine of Straitherne, so called in ane Evident found in the Abbay of Inchaffray, about the year of Christ 1219, in the reign of Alexander the 2nd, to whom his son Melisse succeeded, who was the last of that race. In thir tymes the haille lands lying betwixt Croce Macduff at Newburgh and the west end of Balqwhidder in length, the Oichell hills and the hills called Montes Grampii in breadth, pertained to them either in propert or tennendrie. How that race fell from it I know not; but after them I find there was one Malice Murray, Earle of Straitherne, two charters granted to him at severall tymes of that Earldome, which stands in the Register; neither can I find how it fell from him and his posterity. I think he was son to Andrew Murray, once Governour of the Kingdome. After him King Robert the second disposed this Earldome to his son David, eldest of the two begotten in his marriage with Euphan Ross, daughter to the Earle of Ross; whereupon I find four charters granted at several tymes, whereof the second is most ample, dated at Perth, the third July, the second year of the s^d King Robert his reigne, whereby the said Earldome is given to the said David as fully and freely as umq¹¹ Melisse Earle of Straitherne, or any other Earle, had the same before; with this addition, That he and his heirs should hold it in free regality cum feodis & forisfacturis, ac cum placitis q^r punctorum coronæ. It is sett down in our Scots history, that it was given to him *in feodum masculinum*; that failiezing of Heirs male it should return

to the Crown. But none of thir four charters have this condition, neither is ther any record thereof in the Register, unless it hath been shifted. Yet always it appears to have been so given, seeing his brother procreat of that marriage, Walter Earle of Atholl, had his Earldome on that condition to him and his heirs male, whilk failling to return to the Crown. This Earl David dyed without heirs male, leaving a daughter marryed to Patrick Graham, second son to the Lord Graham, who was slain by Malcolm Drummond of Concraig, leaving a son Malisse, from whom King James the first, finding the patrimony of the Crown much impaired, recognosced the Earldome be reason of the foresaid condition of tailie, giving to him the lands of Monteath, whilk he and his posterity bruiked since, till of late William Earle of Monteath intending to pursue for his restitution to the Earldome, obtained his Ma^{ties} favour for that effect, and licence to pursue so far as he might of law. Whilk how dangerous and prejudicial it is to his M^{atie}, the publick peace and state of the Country, if this Earldome, twice publickly annexed to the Crown by Parliament, be suffered to be evicted from the Crown again by Monteath his pretence of right of succession to David Earle of Straitherne. For better clearing whereof I must deduce part of the Scots history. Robert the 2^d in his youth, and in the reigne of K. David Bruce his uncle, begat upon Elizabeth Muir, daughter to Sir Adam Muir, three sons, John Earle of Carrick, Robert Earle of Ffyfe and Monteath, and Alexander E. of Buchan. He after marryed Eupham Ross, by whom he had two sons, David and Walter. After her decease for several respects he marryed Elizabeth Muir, his concubine, and thereby legitimat her children begoten by her before his first marriage, and left the eldest of them to succeed to him in the Kingdome, called Robert the

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third; whilk bred a grudge, envy, and emulation in the other two sons procreat in the first marriage, albeit they were gifted with the two best Earldomes of the Kingdome, Straitherne and Atholl. David lived not long, but Walter persisted still in his conceived malice, going about by all means to cut off Elizabeth Muir her succession, that he might attain to the Crown himself. He councelled and assisted Robert Earl of Fife to incarcerate and famish to death David Duke of Rothesay, eldest son to Robert the 3^d; and if James, the other brother, had not been sent away, he had not escaped their malice; who after eighteen years captivity in England returning to Scotland, Walter instigate him to behead Murdoch Governor of the Kingdom and his son Walter, and thereafter intending a conspiracy against the King himself, caused Robert Graham and his oye put it in execution in the Carthusians house at Perth, where they murdered the King, pressing to eschew the suspicion thereof himself, in hope to be chosen Governour to K. James 2nd, and then to have found means to have dispatched him also. But being found guilty of the treason he was execut therefore, with his oye, and Robert Graham, committers of the parricide, by which it appears how that succession of Eupham Ross attempting to have the Crown, raised up many seditions to cut off the succession of Elizabeth Muir.

THE REASONS TO MOVE HIS MAJESTIE TO DIS-
CHARGE MONTEATHS INTENDED PURSUIT OF
THE EARLDOM OF STRAITHERNE.

Whither it shall be expedient for his Majestie to promote the succession of Eupham Ross to such ane estate and power in the Country, as may give them occasion to think upon the Kingdome, upon any com-

motion alleadging them, as first lawfully procreat in marriage, to be wronged of their succession therintill.

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Whither it shall be ane imputation of his Majestys honour, in restoring the Earldome of Straitherne to the successors of Melisse Graham, from whom it was taken by K. James the First, a vertuous and just Prince, to be blotted with the aspersion of injury, and oppression, and avarice, and so to have been justly slain by Robert Graham, Tutor to Melisse, for usurping that Earldome wrongously.

3. Seeing the Earldome of Straitherne after recognition to the Crown was annexed thereto be Act of Parliament, whither it be expedient that these Acts of annexation be reduced, whilk must be done before Monteath attain to his Earldome.

4. In the Reign of K. James the fourth, anno 1508, it was thought expedient by Parliament, that the Earldome of Straitherne should be sett in few to the tenants then kindly possessors thereof, for encrease of policy and augmentation of the King's rental and sums of money then payed to the King in composition for the ffews, and since the ffewers have payed their ffewdutys to the Kings Chamberlains, and fra age to age have payed compositions to the Exchequer at the entry of heirs, built houses, planted yards, parks, woods, and other policy, serving their Prince at all tymes, as at Bannockburn with K. James 3^d, Flodden with K. James 4th, and after at Pinky, whither then it is agreeable to justice, that so many honest Gentlemen should be ruined altogether in their estates, if that Earldom be again separated and evicted from the Crown.

5. It is to be considered, what diminution it will be to his Majesty's rent and obedience, when so many lands and men shall be subjected to one, sieing they will hold of him, if he attain thereto, the Earles of Montrose,

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Perth, Tullibardine, the Viscount of Duplin, the Lord Maderty, the lairds of Glenorchy, Keir, Gleneagles, Duncrub, &c.

6. It is to be remembered that King James the Sixth would never grant the style of Straitherne to any subject, far less the Earldome itself, saying always to such as requested for it, he had no more for the blood and slaughter of King James the First.

Thereafter Sir John perused the Registers, and drew furth a minut of whatsoever gifts his Lordship had procured from his Majesty at his entry to be a Councillor. Whilk having communicat with Sir James Skeen and Sir Archibald Atchison, conjunct Secretary with Sir William Alexander, he was advised by them to crave the assistance of Mr. Maxwell and Sir Robert Dalziell, who were his Majesties servants then going from Scotland to Court, who on noe terms would engadge till they had the Earl of Haddingtons opinion, who assured them that ther would be no hazard in informing the King, it would be good service to his Majestie to inform him thereof as follows.

Monteath having extracted some old writts out of the Castle, renewed a pretence to the Earldom of Straitherne, and moved his Ma^{tie} theranent, that he might get satisfaction for his s^d right whilk he pretended thereto, and for that has not only gotten 23,000 pound sterling and a pension of 500 lib sterling per annum for life, but also has gottin a new gift of a part of the said Earldom. As likeways the King accepted a renunciation from the said Earle of all right that he could pretend to the said Earldome as heir to umq^{ll} David Earle of Straitherne, in the whilk he reserves his right of blood, whilk he declares he no wayes renounces. Thereafter he retowr'd himself general heir, as he was bound be the renunciation to doe, to the said David, and last he procured a new ratification from

his Majestie, under the Great Seale, of his said blood : which things being rightly considered, it will be found that his Majestie has been greatly wronged in many things, which, if his Majestie will put to tryall, shall be sufficiently cleared.

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Mr. Maxwell having showed this paper to his Majestie, he immediately sent back Sir Robert Dalzeil post to Edinburgh, with a paper subscribed with his own hand, of the tenor following.

Robin Dalziel, Whereas I have been informed by you and James Maxwell, that the grant of the Earldom of Straitherne, which I have given, is greatly prejudicial to me both in honor and matter of state, in so much that he either hath or may serve himself heir to K. Robert the Second, therefore, since it doth seem to lay a heavy aspersion upon a man who I both do and will esteem till I see evident cause in the contrary, he having done me many good services, I command you to produce your authors, that I may either punish them for their great aspersion, or reward them for their good service in so important a discovery ; otherways I must take James and you for my authors, judging you as ye shall prove your allegations. Make haste in this for I must not suffer a business of this nature to hing long in suspenge. Whitehall 2 October 1632.

Sir Robert having come to Edinburgh the 4th day, conveyened these informers before Sir Thomas Nicolson of Carnock, Sir Lewis Stewart, and Mr. Andrew Aytoun ; wher having laid before them the paper containing the Queries, desiring their answer therein, Sir Thomas at the hearing of the first Article read, rose up, excusing himself that he would hear no more of that, swearing with a great oath that they would all be hanged who were accessory to that bussines or had hand in prosecuting that service, and went instantly out of the house. The other two condescended to hear the

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Questions and to give their judgements thereanent under their hands, which they did upon his warrand subscribed by himself and the said Lawyers, of which the tenor followeth.

I, Sir Robert Dalziel, Gentleman of his Majesties Privy Chamber, as having warrand and direction from his Majestie to produce my authors, who did inform me and James Maxwell of Innerweick, one of his Majesties bed chamber, that in their opinion his Majestie may seem prejudged in honor and state, be the renunciation accepted from the Earle of Straitherne with the provisions and reservations therein contained service and retour, whereby he the said Earle is served nearest heir of blood to David Earle of Straitherne, infestment of Urchat granted to the said Earle, and patent of honour, whereby his Majestie under his hand and seall hes acknowledged the said Earle to be undoubted heir of blood to the said umq^l David, doe require you, in his Ma^{ties} name, Sir James Skene of Currie-hill, president of the Session, Sir Archibald Aitchison of Glencairn, Secretary to his Ma^{tie}, Sir John Scot of Scots-tarvet, Director of his Majesties Chancellary, our authors, of whom the said James and I heard the samen. That seeing his Ma^{tie} hes directed me to take the advice and opinion of lawyers upon the premisses, that ye will propone all such questions, difficulties, doubts, and scruples, that any of you hes or can find in the writts foresaid, circumstances, consequences, and dependances thereof, To the end his Ma^{tie} may be resolved thereanent, whilk undoubtedly his Majestie will accept for good service, ffor doing whereof these presents shall be to you ane sufficient warrant. Subscribed by me at Edinburgh, November 1632, before Mr. Andrew Aytoun of Logie, and Mr. Lewis Stewart Advocat. Sic subscribitur, Ro^t Dalziel, Mr. Andrew Aytoun, Mr. Lewis Stewart.

THE PROPOSITIONS ANENT THE EARLDOM OF STRAITHERNE.

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“ 1. It is craved, if a general service of this Earle of Stratherne as heir to David Earle of Straitherne, eldest law^l son of the first marriage to King Robert the 2^d, be a sufficient title to the Earldome itself, whilk he hath renuned in his Majesties favours, or gives to his Majestie any better right than he had before? It is answered, that the General service of this Earle of Straitherne gives no right to the Earldom of Straitherne to the said Earle; and as to the renunciation granted to his Majestie be the said Earle, it is of no effect and gives noe right to his Majestie, seeing the granter of the same had no right to the said Earldom, because the same was annexed to the Crown by King James the Second, since which time it hath been continually bruiked be his Majestie and his predecessors as their annexed property; but by the contrair does weaken his Majesties right, in accepting a right from him, and acknowledging a necessity of renunciation when ther was no need.

2. It is demanded, If the granting of a new right by his Majesty of the Lordship of Urchat has not wronged the King, and all those who have right from his Majestie and his predecessors, of any part of the said Lordship? It is answered, that it has wronged his Majestie to give that away which was his own, and whereunto the said Earle had no right in respect of the annexation foresaid, and also will wrong those who have right from his Majestie and his predecessors by continual pleas against them, and denudeth his Majestie both of property and tennendrie of the said Lordship.

3. It is required, whether the said Earle may purchase himself retoured and infest, as nearest and lawfull

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heir to David Earl of Straitherne in the said Earldom, conform to the clauses obligator contained in the s^d renunciation? It is answered, that the said Earl can no ways purchase himself to be infest in the said Earldome, because of the annexation of the same to the Crown as s^d is.

4. Is it not boldness that the said Earle should have served himself heir of blood to David Earle of Straitherne, eldest lawfull son of the first marriage to K. Robert 2^d, whereby he is put in degree of blood equall to his Majestie? It is answered; in our judgement the boldness seems too great.

5. It is craved, if the Earle of Straitherne may serve himself heir to K. Robert 2^d, sieing he is allready served heir to David Earl of Straitherne, eldest son to K. Robert 2^d? It is answered, That in our judgements, if the case were among subjects we sie nothing in the contrair.

It is craved, whither the King is prejudged in honor and state, by acknowledging the said Earle to be undoubted heir to David Earle of Straitherne, and consequently to be in degree of blood equal to his M^{tie}? It is answered, that apparently, if his Ma^{tie} had known the consequence of it for reason of State, he would never have done it, and it seems to us his Majesties honour to be interested in acknowledging any subject to be equall in blood to himself." Both which being delivered to Sir Robert Dalziel, he returned the next day to Court to give account to his Majestie.

Traquair fearing that the plot had been against himself, desired my Lord Durie to draw a meeting betwixt the said three informers and himself to dine, and then shew them that he saw some great bussines brewing among them, and only desired to know if any of them had any quarrell against himself, whereof they clearing that they had none. In the middst of the dinner a ser-

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vant in the outward room came to speak with Traquair, which having done, he returned, demanding if any of them had bussines at Court, sieing he had spoken with one who would carefully deliver their letters. The Secretary and President suspecting nothing of the particular, Sir John Scott doubted that their purpose was discovered by Sir Thomas Nicolson, who was cusin german to the Kings Advocat, and that night Sir John advysed with the Earl of Haddingtoun, and was counseled be him to ride up himself, and carry with him all the papers concerning that bussines, sieing the person to whom they had delivered a part of them was illiterat, and not able to answer against such things as may be objected against these papers; whilk made Sir John conven Sir James and Sir Archibald, and having gotten under their hands a paper giving him commission to repair to his Ma^{tie} for clearing these matters contained in thir papers, oblidging themselves in their lives and estates to stand to whatsomever the said Sir John should say to his Ma^{tie} in that behalf in their names; and that instant night, before ten of the clock, within three days of Christmass, rode that night to Dirltoun, and the next morning took post at Cockburns path, and the fifth day came to Hamptoun Court, where his Ma^{tie} resided; who being brought into the bed-chamber by Mr. Maxwell, he had long conference with his Ma^{tie} concerning the said matter, and shew him the paper which he had caused Mr. William Drummond of Hawthornden, his brother in law, write, which he desired instantly to be read in his presence, whereof the tenor follows.

It is to be considered if Henry the 6th King of England, by his exceeding favour in restoring blood and allowing the descent and title of Richard Duke of York, who openly in Parliament thereafter made claim

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to the Crown as his own right, would, if he could, have reclaimed that approbation whilk established the Duke's title, the son of Anna Mortimer, who came of Philippa, daughter and sole heir to Lyonell Duke of Clarence, third son to Edward the Third, was to be preferred in the succession of the Kingdom to the Children of John of Gaunt, fourth son to K. Edward. The like may be alleadged in the title of the E. of Straitherne. The children of the first Marriage by common law are to be preferred in succession to the children of the second, for the marrying of Elizabeth Muir did but legitimat & make her children succeed after the children of the first marriage. As for the authority of a Parliament, it is to be considered, if the authority of Parliament may conferr and untail a Crown from the lawfull heirs thereof to the nixt apparent heirs, or if any oath given unto a King by man's law should be performed when as it tendeth to the suppressing of truth and right, which stands by the law of God; then if one Parliament hath power to untail a Crown, whither may not another Parliament, upon the like considerations, restore the same to the righteous heirs. It is to be considered, if a subject might safely capitulate with his Prince, that is to say, give over and quitt claim all right and title which he hath to his Sovereigns Crown, his right being sufficient, and if by his capitulation his heirs be bound, and if it be honourable for a Prince to accept his conditions.

The trouble which Edward Balioll, son to John Balioll, raised in Scotland, is yet recent in History, notwithstanding that his father had resigned to K. Robert and his heirs all the right and title which he and his heirs had, or might have, to the Crown of Scotland, and after resigned the same in favour of Edward King of England.

It is to be considered, if the Pope, the Kings of

Spain or France, seek an occasion to trouble the state and peace of this Island, should entertain one of the Earle of Stratherne as Queen Elizabeth did Antonio Prior of Crato, who claimed the Crown of Portugal, whither they had not a fair bridge to come over to this Island and trouble it.

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It is to be considered, if then a consent by Queen Catharine of Medices, under the charge of S^t Rose & Brissac to the Terceras Islands, to purchase possession of the Kingdom of Portugal as belonging to her, as heir to the house of Boulonge by a descent of two or three hundred years, might have been justified by the sword if she had prevailed; and it is fresh in all mens memories, what claim was made by Philip the Second of Spain for his daughter the Infanta to the Crown of France, during the Civil Wars thereof. So the Duke of Guise, in the reign of Henry the Third French King, deduceing his genealogy from Charles the Great, aspired to the Crown of France; Perkin Warbreck, calling himself Richard Duke of York, aspired to the Crown of England.

It is to be considered, if Queen Mary of England, who cutt off the head of Lady Jane Gray, and Queen Elizabeth, who did the same to Queen Mary of Scotland her next kinswoman, were living, would have suffered to enjoy the opinion of being nearer to the claim of their Crowns than themselves.

It is to be considered also, if a subject serving himself heir to a Crown, by the oversight of the Prince and negligence, indirectly and in crafty coloured terms, notwithstanding of whatsoever protestations of his Advocat in the contrair, may be accused of high treason. And whither a Prince may justly keep under the race of such, whose aspiring thoughts dare soare so nigh a Crown as they have been kept these two hundred

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years bygone, for reason of State, unless the Prince exalt them to give them a more deadly blow and extirpat them and their whole race, suborning mercenary flaterers to make them aim above their reach, Dum nesciunt distinguere inter summa et præcipitia, princeps q̄ psequitur honorat, extollit natu ut lapsu graviore ruat.

Sir Robert Dalziel being present, said that Monteath was so insolent in his speeches, that it could be proven by famous witnesses, that he was heard say that he had the redest blood in Scotland (meaneing that he was nearest to the Crown), whereat the King seemed to be commoved, dismissing them at that tyme only. Mr. Maxwell is said to have heard his Ma^{tie} say, it was a sore matter that he could not love a man but they pulled him out of his arms.

In this interim the purpose of Sir John his coming to court being divulged, Morton Treasurer and the Chancellor consulting thereabout, agreed to do their best endeavour to oppose him, and understanding that Monteath was come to Ware, kept intelligence with him, and undertook to free him from any hazard, provyding he would undertake to deall with his Ma^{tie} to get Morton made Knight of the Garter, whilk he promised. Whereupon they dealt with his Ma^{tie} to contemne such frivolous accusations; notwithstanding whereof, the King appointed another dyet to hear Sir John his farder accusations ag^t Monteath, who shewed to him certain quotations from history, clearing that his Ma^{tie} was abused, both by his Advocate, Sir Thomas Hope, and the said Earle, and perswaded to give out great summs of money to them both for making a Renunciation, shewing his patent of honour extracted out of the Chancelary, and his own letters written for that effect, of which the tenor follows.

TO THE ADVOCAT.

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After that we have conferred with our trusty and well beloved Cusine and Cuncelor, the Earle of Monteath, considering his right and title to the Earldome of Straitherne, in that which doth particularly concerne us, as ye wrote unto us, to be of such importance that it is not fitt for us to neglect the same, seeing he hath willingly submitted himself to us to be disposed upon as we please in all these lands belonging thereto that are of our property, We desire to be secured of the same, leaving him to prosecute his right against all others for all other lands whilk he can justly claim be vertue thereof. Our pleasure is, that ye draw up ane surrender of all lands of our property comprehended within his Earldome, to be signed be him or any other, or any such right as ye shall think requisite for our surety, to be registrat for that effect. And as, after due consideration, we intend to give him reasonable satisfaction for the same, so we are willing that ye assist him in his other actions so far as ye can lawfully doe. We bid you farewell. At Hampton Court, 29 September 1629.

TO THE EARL OF MONTEATH.

Whereas ye are willing to surrender up unto us our right of all these lands that are of our property lying within the Earldom of Straitherne, We have written to our Advocat to draw up a surrender of all them that are contained within your Earldom, to be signed by you, leaving you to prosecute your right against all others for all other lands whereunto ye can justly claim right. And as ye have freely submitted yourself unto us to be disposed upon as we please in all these lands that are of our property, so we intend, after due consideration, to give you a reasonable satis-

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faction for the same, and have willed Our Advocat to assist you in all your other actions so far as he can lawfully doe. So we bid you farewell, &c.

TO THE CLERK REGISTER.

Trusty and well beloved Councelor, Whereas Our right well beloved Cusine and Councelor the Earl of Monteath, President of our Council, is for some important considerations known to us, to search for some wryts among our evidents & rolls, whereof ye have the charge, Our pleasure is, that ye to that purpose make patent to him what records, evidents, or wryts whatsoever ye have in your custody and charge, within our Castle of Edinburgh or elsewhere, and that ye give unto him such thereof as shall be found be our Advocat to concerne the purpose for which we have granted unto him this licence, together with all extracts that they to this effect shall require, and this shall be your warrand. Dated at Whitehall, 9 Nov^r 1629.

TO THE ADVOCAT.

Whereas we have both heard and found by experience your affection for furthering of our service since your entry thereto, since which tyme the state of our affairs hes required in your charge great pains and trouble; But understanding the state of our coffers to be such at this time that no money can be conveniently payed by us, yet we intend to give unto you the sum of two thousand pound sterling, so soon as we can conveniently doe the same, whereof we have thought good hereby to give you notice. So expecting from time to time, ye will continue, as ye have begun, to advance our service in your hands, we bid you farewell. 9th November 1629.

THE PATENT OF HONOUR.¹

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To all men to whom these presents shall come. Whereas we, calling to mynd that our well beloved Cusin and Councelor William Earl of Monteath, President of our Secret Councill, stands served and retoured undoubted heir of blood to umq¹¹ David Earl of Straitherne, his grandsire's fore grandames father, the son lawfull of umq¹¹ King Robert the 2^d, our predecessor of happy memory, to the which David Earl of Straitherne and his heirs the said Robert the 2^d, his father, by two diverse Charters, one dated at Edinburgh 19 June the first year of his reigne, the other at Perth 3^d July the said year, disponsed the said Earldome, with all annexis and pertinents thereof. And albeit the foresaid Earl of Monteath, as heir foresaid, had good right to the said Earldome, yet he, for the humble respect which he carryed to our Royal and Sacred person, By his Letters of Renunciation dated 22d January 1630, registrat 3d March thereafter, renunced all right and title he had or might pretend to the said Earldome in favours of us and our successors, reservand to the s^d Earle the lands and barrony of Killbryde and others men^t in the said Renunciation, with this express provision, that the foresaid Renunciation, should not be prejudicial to him and his foresaids of their right and dignity of blood, belonging to him as heir of lyne to the said umq¹¹ David Earle of Straitherne, as the said Renunciation in itself more fully proports. And we earnestly willing that the foresaid William Earle of Monteath, his heirs male and successors, may enjoy the right and title of the Earldom of Straitherne, and succeed to the samen title, place, and dignity due to them be the said two Charters

¹ A Copy of the *Original* will be found in APPENDIX, No. XI.

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and infeftments foresaid, granted be the said King Robert the second to the foresaid David Earle of Straitherne and his heirs of the said Earldome, in so far as concerns the title, place, and precedency due to them as Earls, therefore witt ye us to have ratified and approven, and be the tenor hereof ratifies and approves the foresaid title, honour, dignity, and place of Earl to the said Earl of Monteith¹, his heirs male and of tailie, who shall hencefurth be stylled and called Earles of Straitherne and Monteath in all tyme coming, and that they shall bruik joyse and possess the foresaid title and dignity in all assemblys, conventions, and parliaments, and all other meeting places whatsoever, with the same priviledges, degrees, and places, whilk belonged to the s^d David Earl of Straitherne and his heirs, granted to him by King Robert the 2^d, his father, and with precedency and priority before whatsoever other persons creat and made Earls after the date of the said two charters, and all who cannot produce elder infeftments, letters patent, and documents, for their titles and dignities of Earls anterior to the foresaid two charters.² In witness whereof, &c.

THE RENUNCIATION.³

Be it kend, &c. Me, William Earl of Monteath, Lord Graham of Kilpont, President of his Ma^{tie} Councill and High Justice of Scotland. For as meikle as umq¹¹ King Robert the Second, be his Charter under

¹ "and his aforesaid due by virtue of the said Charters granted by the said late King Robert the Second to the aforesaid late David Earl of Strathern and his heirs. And we will that the aforesaid William Earl of Monteith and" &c. as above. See the Original in No. XI.

² "granted by the late King Robert the Second to the aforesaid late David Earl of Strathern." Ibid.

³ An authentic copy of the Renunciation will be found in No. X.

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the Great Seal, gave to his son David and his heirs the Earldome of Straitherne, to be holden in free regality, with all fees, forfeitures, and other libertys; like as also the said King Robert, by another chartor, granted to his said son and heirs the said Earldom with addition of the four points of the Crown, as in the said chartors of the dates foresaid extracted furth of the Register of the Great Seall of Scotland, under the subscription of Sir John Hamilton of Magdalens, Knight, his Ma^{ties} Clerk of Register, bears. And for as meikle as I, the said Earle of Monteath, am undoubted heir of blood and successor to the said umq^l David Earl of Straitherne, being descended linealy from Patrick Graham and Eupham Stewart, daughter to the said David, and thereby having good and undoubted right to claim the said Earldom, yet not the less considering that the said Earldom hes been bruiked by his Ma^{tie} and his predecessors as a part of the annexed property, continually since the decease of King James 2d, and that the heretors and possessors holds their lands of our Sovereigne Lord the Kings Ma^{tie} and his predecessors; and calling to mind the extraordinary favours bestowed upon me by my gracious Sovereigne, Charles, King of Great Britain, &c.; and that it hath pleased his gracious Majestie to bestow on me such satisfaction therefore, as his Ma^{tie} in his gracious wisdom thought expedient, therefore witt ye me, in all humble affection and respect to my sacred Sovereigne, to have renuned, like as, &c. all right and interest whatsoever, whilk I or my airs have or may pretend to the said Earldom, in special favours of my sacred and gracious Sovereigne, his heirs and successors, to remaine with them and the Crown for ever. Provyding allways, that thir presents be not extended to the lands and barony of Killbryde, lying within the said Earldome. And I bind and

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oblige me and my foresaids to make surrender of the said Earldom in favours of his Majestie and his successors, ad perpetuam remanentiam; And to that effect make and constitute, &c. my p^rors, with power to them to compear before his sacred Majestie, or his Majesties Commissioners appointed for receaving of surrenders and resignations, and there, in all humility and submissive reverence, as becomes, to resigne and surrender; Likeas &^{ca}, Providing thir presents prejudice not me nor my foresaids of our right and dignity of blood, pertaining to us as heirs of lyne to the said David Earl of Straitherne. And also I bind and oblige me and my foresaids, if need bees, to obtain ourselves served, retoured, and seased in the said lands, as heir to the s^d umq¹¹ David; and for doing thereof gives power to my said procurators in most ample form, and to reiterat and renew, and for the more security, &c. Subscribed at Halyrudehouse, the 22^d January 1630, Before these witnesses: Sir Thomas Hope of Craighall, Advocat, Sir Colin Campbell of Lundie, Sir James Gordon of Lesmore, and Mr. William Maxwell, wryter hereof.

By serving himself heir to the eldest son of the first marriage he might have served himself heir to the father of that son.

In the intended summons of Reduction and Improbation against his Majesties Vassalls of the Lordship of Urchat, for recovering their superiority and property, he had his genealogy drawn wherein his Majesty was placed on the left hand, whilk Sir John shewed to the King, who was somewhat commoved therewith.

Monteath coming to Court prostrat himself to his Mat^{ie}, acknowledged his fault, and got a favourable acceptance, by intercession of Morton and the Chancellor; only he was told by the King, that he behooved

to quite that title of Straitherne and take that of Airth, which he did. This being notified to Sir John Scot, he entreated Mr. Maxwell to get him access to take his leave of his Majestie, whereon his Majestie quarrelled him for so long concealling it and for giving out the breives. To which he answered, that he had revealed it soon enough for any amends was likely to follow; and for the other, it was the duty of his place, and the wrong was by sending back the retour. Sir John having kissed his Majesties hand returned; at which time nothing was done, but only a command given to Monteath to dash out of his windows the arms of the Earldom of Straitherne.

In the next Session his Majestie sent order for raising summonds of reduction of that retour and service led at Monteaths instance, and joyned with the Advocat Sir Lewis Stewart; and having gotten exhibition of all his wryts, got a decreet of reduction thereof and ordinance to cancell them all. But the fifteen noblemen and gentlemen who were upon the assyse, finding themselves in hazard to be convict of error, gave in defences to the Lords as follows.

Absolvitor from the Summons, Because the assysors were in optima fide to serve the said Earl affirmative, seeing they offered them to prove that, by transaction made betwixt the King and the said Earl for the two barronys of Orchat and Bradwell, and confirmation of the lordship of Killbryde and the sum of three thousand pound Sterling, the said Earl did grant the renunciation to them produced at the service by the Kings Advocat, who did mediat the said bargain by his letters to his Majestie, and did, by his Majesties special warrand, form the said renunciation, bearing express reservation of the said Earls right and dignity of blood, and obleidging the said Earle to serve himself heir to the said David, and to procure himself infest

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in the said Earldom as heir to the said David, for strengthening the Kings right thereunto, and whilk sum and satisfaction in general termes is acknowledged by the said Earle in the said renunciation to have been gotten and received from his Majesty, for making the said renunciation. And they seeing his Majesties Advocat compear for his Majestie, and produce the said renunciation registrat in the publick register be the compearance and consent of his Majesties Advocat, and also knowing perfytyly that his Majestie in the charter of Urchat and Bradwell did, under his hand sciens and prudens acknowledge the said Earle of Monteath to be nearest and lawfull heir to the said Earl David, and that the said chartor was dictated by his Majesties Advocat and subscribed by the Lords of his Majesties Exchequer, and ordained to pass the Great Seall, and the King therein promitted in verbo Regis never to come in the contrair, nor to doe any action contrair to the same, they did no wrong to serve affirmative. Like as they offered them to prove, that thereafter his Majesty hes not only acknowledged the said Earl to be duely served as nearest and lawfull heir to the said Earl David, but also, by patent under his hand and Great Seall, hath granted to him the title, honour, and precedence of the said Earl David, making the service and retour to be the narrative of the said patent; and sua being now major, and compearing be his Advocat, cannot come in the contrair thereof to accuse the Inquest of Error, for doeing that which his Majestie had solemnly and publicly by his own hand and Great Seall done, and Commissioners of Exchequer acknowledged, and standing now upon publick record in all the registers and sealls usual in such cases.

As likeways the Shirreff of Edinburgh, before whom the said Service was deduced, did crave absolvitor from the summonds of the subsequent paper.

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1. The said Shiref did no wrong, because he offers him to prove that the procuration for serving of the said breeves wes formed by the Kings Advocat, or at his direction, and written by his own sisters son, his servant.

2. That by the Advocats special letters written to his Majesty, it was informed that the purchase of the Earl of Straithernes title of that Earldom was a matter of such importance, that it was not fitt for his Majestie to neglect it, and that his Majestie thereupon directed his particular missive to the Advocat for purchasing the said right.

3. That for the same effect, the said Advocat delivered a letter to the Clerk Register, commanding to make patent the Registers, and to give to the Earl such wryts as should be in the Castle, or elsewhere, whilk the said Advocat should find to concern that purpose, with the extracts of all other that the said Earl should crave.

4. That the same tyme his Majestie, by his letter, gave the Advocat promise of two thousand pound sterling for his pains.

5. That the information of the brieves sent to Chancellary was dated and written be the said Advocat himself, or servants, and that the said were taken by them out of the Chancellary.

6. That the renunciation produced to the s^d Sherif was formed and penned by the s^d Advocat himself, and written by M^r William Maxwell his servant, and that the samen was insert in three Registers at the least, presented and given in thereto be the Advocat or his servants at his direction.

7. That the signature of Orchat was penned by the direction of the said Advocat and was docked by him (whilk his Majestie is only accustomed to read). And in the docket thir essential words are left out (that the

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Earl of Straitherne was undoubted heir of blood to the Earl David), altho the samen were insert in the chartor.

8. That the samen charter is granted with consent of the King's Treasurer, and a clause insert therein, obliging his Ma^{tie} never to move action, claim, or process upon the samen.

9. That the Patent of Honour is likeways dictated and penned be the said Advocat, wherein his Majestie is made both to approve the services and retour, and acknowledge and accept of the foresaid renunciation, and that the samen was lawfully subscribed publickly in the Exchequer be ane sufficient number of the haill officers, and being written and sealed at the Great Seall, was delivered to him by the vice president. And so the Sherif did no wrong in his office.

Who all, by their mediation and intercession with his Majestie, their friends at Court procured from his Majestie a Letter to the Lords of Session, for freeing and releiving them of all hazard and danger they might incur by being upon that service, as follows.

Right trustie and well beloved, &c. We greet you well. We were pleased to give order to our Advocat to raise summonses, at our instance, for reduceing of the service and retour of William Earl of Monteath, as heir to umq¹¹ David Earl of Straitherne; by the whilk summonses the nobles, barrons, and others that were upon the Inquest upon the said Service are conveyened upon wilfull at least ignorant error. And for as much as we are fully persuaded that the saids persons of Inqueist proceeded therein bona fide upon warrand standing then unreduced, whilk was sufficient ground for the assysers for serving the said Earl affirmative, and namelly, that ther was a renunciation granted be the said Earl to us of the annexed property of Straitherne, wherein the said Earl is designed heir to

David Earl of Straitherne and Lady Eupham, his alleadged daughter, and to the said umquhill Patrick Graham, alleadged Earl thereof and alleadged spouse to the said Eupham, whilk renunciation was then standing registrat in the books of Exchequer and in the publick Register of Renunciations, and was produced by our Advocat to the Assyse the tyme of the service, who protested that the said service should be led in corroboration of the renunciation and no other ways, which protestation was admitted be the Judge; And likeways it was perfytlie knowen to a number of the said Inquest, that ther was a signature past in the Exchequer whereupon infestment after followed, by the which we disposed to the said Earl of Monteath, as undoubted heir of blood to David Earl of Straitherne, the lands and barronys of Orchart and Broadwell, in respect of the which warrand standing then unreduced, and of our Advocats compearance and not opposing of the said service, the Assysers in the duty of their offices could not other wayes proceed than by serving affirmative for the tyme. And therefore it is our pleasure, that the saids noblemen, barrons, and others, oe declaired free and quite of all error, discharging all pain and censure you may incurr thereupon. And for farder security we require you, that ye admitt and sustain their reasons as relevant and proven to give them a perfytt absolutor from all error, and that accordingly ye pronounce it in their favours, but prejudice always to our action of reduction, commanding to insert thir presents in your books of Sederunt for thair better warrand and exoneration; for doing whereof these presents shall be a sufficient warrand. Whitehall, 22nd February 1633.

Notwithstanding of all which Monteath continued still in his grandeur and haill places, and his Majesty himself was little better secured be that decree of

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duction, seeing that pedigree can be made out to the full by the writts, evidents, and securitys lying in other noblemens chartor chists, vassalls of the Earldome, till the tyme that his Majesty took resolution for going to Scotland for accepting the Crown thereof. About which time Morton Treasurer expecting the accomplishment of Monteaths promise to get him made Knight of the Garter, and finding that he had fairly failed to him therein, and that instead of doing for him in that particular he was doing for himself and his own posterity to purchase them that honour, he was thereby soe exasperat, that he and the Chancelor had their address to the Queen, informing her of all the foresaid passages done and acted be the said Earl in prejudice of her Royal children, assuring her that if those impediments were not totally removed, and Monteath censured and punished for so high a presumption, it would not fail to be hazardsome to the Prince and his descendants. Whereupon she made her address to his Majesty, and got his promise that he should take a course therewith before his return to England; which effectuallie he did, by giving order some days before his return to the Lord Weston, the Earl of Caerlile, and Secretary, to conferr with Sir John Scot and view all his papers; who, in obedience to his Majesties commands, having read them at full length, at the going out of the town the Lord Weston affirmed with ane oath to the rest ther present, that he wanted nothing but a sharp sword to be King. Within few days thereafter his Majesty proceeded in Holyrude-house to make trial of the words spoken be Monteath, that his blood was the redest blood in Scotland and that the King was obliged to him for his Crown; and having found that such speeches were uttered by him, by the wittnessing and deposition of the Earls of Southesk, and Ethic, and the Countess of Mar, whom his Majesty

sent for for that effect, His Majestie, after taking journey to England, sent down a missive letter declairing his mind to the Council concerning the said matter, and thereupon the Act following was made by them.

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At Edinburgh, 8 November 1633.

The whilk day George Earl of Kinowl, Lord High Chancelor of Scotland, declaired to the Lords of his Majesties privy Council, that he had lately received ane letter from his Majestie concerning his Royall will and pleasure against William Earl of Airth, for some treasonable speeches spoken by him, and the fault committed be him in his service to the Earldom of Straitherne, whilk letter he exhibite to the Lords, and declaired that he had written for the said Earl to come and hear his Majesties will concerning him. Whereupon the said Earl compearand; and his Majesties letter being read to the Earl, he acquiesced with all due reverence to the samen, and made a surrender of all places, honours, priviledges, and immunities, as also of his pension out of the Exchequer. His offices were the Presidentship of the Council, of Justice General, and extraordinar Lord of the Session. And for more security subscribed his dimission of the said places, and consented that the samen should be registrat in the books of Council and Exchequer, ad futuram rei memoriam. Whereupon the Lord Chancelor asked Instruments.

THE KING'S LETTER TO THE CHANCELOR.

Right trusty, &c. Whereas, upon the Commission for tryal of some treasonable speeches be the Earl of Airth, we find sufficient proof to believe the same, and

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in regard lykewayes that he, by his own acknowledgement, confesseth in effect as much, together with the great fault committed in his service to the Earldome of Straitherne, as is contained under his hand in his late submission, We therefore find that he is not worthy to enjoy the charges which he hath formerly born in the State by our gift, nor pension allowed to be payed to him out of the Exchequer. Wherefore we have thought good hereby to signifie the samen to you; and it is our pleasure that ye require the said Earl, in our name, to surrender up into our hands these his charges of Presidentship of Our Council, Justice General, and place in Session, to be disposed of as we shall appoint, as likewise the gift of the said pension; and in the mean time that ye confine him to his own house and the bounds belonging thereunto, which are not near to Holyrudehouse where the publick meetings of our Estate are kept. And for doing whereof these presents shall be your sufficient warrand. From our Court at Whitehall, 9th October 1633.

THE DIMISSION.

Be it kend to all men by these present Letters, Me, William Earl of Airth. For as meikle as it hath pleased his sacred Majestie, by his Highness letter direct to my Lord Chancelor of the date the 9th October 1633, to declair that whereas his Majestie, upon the commission for tryall of some treasonable speeches spoken by me, hes found sufficient proofs to believe the samen, and that I have by acknowledgment confessed as much in effect, together with the great fault committed by me in my service to the Earldom of Straitherne, in regard thereof his Majestie, by his letter, hes found that I am not worthy to enjoy the

charge whilk I have formerly born in the State, nor yet the pension payed to me furth of the Exchequer, and hes commanded the Lord Chancelor to require of me to surrender into his Majesties hands my charges, places, &c. Therefore, and for obedience to his Majesties sacred will and ordinance, witt ye me to have resigned and surrendered. Likeas, &c. And for the more security, &c. Sic subscribitur,

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AIRTH.

The manuscript History of which this is a Copy was found in the Repositories of Captain John Graham of Duchray.

(Signed) GEORGE GRAHAM.

No. X.

COPY OF THE RENUNCIATION OF WILLIAM
EARL OF MONTEITH OF HIS RIGHT TO
SUCH OF THE LANDS OF THE EARLDOM
OF STRATHERN AS WERE VESTED IN
THE CROWN, DATED 22nd JANUARY 1630.

[From the General Register House in Edinburgh.]

No. X.
RENUNCIATION
OF EARL OF
MONTEITH OF
CERTAIN LANDS
VESTED
IN THE CROWN.
22nd January
1630.

At Ed^r the twelf day of Marche I^{m.vj.}^c and threttie
zeirs

The renunciation underwrittin wes productit be
M^r Johñe Oliphant advocat and reğrat in the buiks of
generall register or sessioun appoyntit for registratioun
of saisingis reversiounes & vther writtis in the 27 buik
y^rof and in the leaffis followeing conforme to the act of
parliament maid y^ranent in anno 1617 q^rof the tennor
followes. Be it kend till all men be thir ðnte letteres
me Williame Erle of Monteithe Lord Grahame of Kil-
pount and Kilbrydie President of His Majesties Counsell
and Heiche Justice of Scotland fforsameikill as umquhill
King Robert the third king of Scotland of blissed
memorie be his chartor vnder the great seill of the
dait at Ed^r the nyntein day of Junij and of his reigne
the first zeir gave grantit and dispoit to umq^{ll} his
dearrest sone David Stewart knicht Erle of Stratherne
and to his aires all and hail the erledome of Stratherne
withe the pertinentis to be hauldin be the said David
and his aires according to the forme and tennor of the
chartor maid to him thairvpoun, withe this additioun,
that he and his aires suld have and posses the said

erledome for evir (in frie regalitie) withe all feis foir-faulto's and vtheris liberteis comoditeis easmentis and righteous pertinentis whatsumevir qlk perteinis to ane frie regalitie or qlk aucht to pertein thairto, according to the lawes and customes of the kingdome and als frielie as vmq¹¹ Malice Erle of Stratherne or ony vther Erle y^rof held the said erledome of Stratherne of beffoir Lykeas also the said vmq¹¹ king Robert the third, be his vther chartor of the dait att Perth the third of July and the first zeir of his rigne gave grantit and disponsit to his said vmq¹¹ dearest sone Dauid Erle of Stratherne and his aires all and haill the said erledome of Stratherne withe the pertinentis to be hauldin be him and his aires, conforme to the tennor of ye said former chartor withe this aditioun that he and his aires sould have and bruik the said erledome for evir in frie regalitie in maner foirsaid And also with the four poyntis of ye crowne as in the saidis charto's of the daittis foirsaidis extractit furthe of the register of the great seill of Scotland vnder the subscription of Sir Johne Hamiltoun of Madalens kny^t his Majesteis Clerk Register at mair lenthe is conteinit And ffor-sameikill as I the said W^m Erle of Monteithe am vndoutit air of bluid and successor to the said vmq¹¹ Dauid Erle of Stratherne being come and descendit lineally of vmq¹¹ Patreik Grahame Erle of Stratherne and Euphane Stewart Countes of Stratherne the only dochter of vmq¹¹ Dauid Erle of Stratherne and that thairby I have guid and vndoubtit richt to clame the said erledome of Stratherne withe all landis liberties and priviledges pertaining y^rto, zit nocht the less I considering that the said erledome of Stratherne hes bein and is bruikit be his Majesteis and his predicesso's as ane pairt of their propertie continually, sen the dayes of King James the secound, and that the heritors and possesso's hes haldin and haldis thair landis of our

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Soverane Lord the Kingis Majestie and his predicesso's as ane part of yair propertie And I calling to mynd the great and extraordinarie favo's and respectis bestowed on me be my dread and gracious Soveraine Charles King of Great Brittain France and Irland Defender of ye Faithe and that it hes pleasit his sacred majestie out of his gracious favour and benevolence and in his superabundant equitie justie and wisdom to bestow on me suche satisfacioun and recompence thairfor, as his Maiestie in his gracious wisdom thocht expedient thairfor witt ze me in all humble affectioun and respect to my sacred Soveraine To haue renuncit lykeas be thir pnttis I as air of bluid and successor to the said vmq¹¹ Dauid Erle of Stratherne and to umq¹¹ Euphane Countes of Stratherne his only dochter and to vmq¹¹ Patrik Grahame Erle of Stratherne hir spous, off quhome I am lineally descendit in the richt of bluid renunes resignes quytclaines and dischairges all richt claime and tytill of richt petitor and possessor and all richt and entres quhatsumevir qlk I or my aires may haue or pretend in and to the said erledome of Stratherne with the pertinentis or ony pairt, annexit to his Majesties crowne or comptit in his Majesties exchequer as his Majesties propertie withe the said privilege of regalitie and four poyntis of the crowne and all vther priviledges and liberties pertaining to the said erledome, and that in speciall favo's of my said dread and gracious Soueraine his aires and successo's to remaine withe thame and the Crowne of Scotland for evir Prowyding alwayis that thir pnttis be nawayis extendit to the landis and barony of Kilbryd withe the pertinentis lyand withe in the said erledome of Stratherne, and q^rof I and my predicesso's ar and hes bein in possessioun as ane pairt of the said erldome of Stratherne be the charto^r fairsaidis continwallie sen the daite yairof nor to na vther landis lyand withe in ye shredome of Perthie

or erldome of Monteithe or witheyn any vther pairt of the kingdome not being locally witheyn the stewartrie of Stratherne and of his Ma^{ties} annexit propertie of the said stewartrie And I bind and obleis me and my forsaidis if neid beis to mak surrender of ye said erledome and vtheris foirsaidis except befoir excepted in favo^rs of his sacred Ma^{tie} and his successo^rs ad perpetuam remanentiam, and to yat effect maks and constitutis my p^rors with power to yame or ony of yame to compeir befoir his sacred Majestie or his Ma^{ties} comissioneris appoyntit for ressaveing of surrenderis and resignatiounes and thair in all humilltie and submi^s reverence as becomes to surrender and resigne lyke as be thir p^rnttis I surrender and resigne the said erledome of Stratherne withe the pertinentis richtis of regalitie with four poyntis of the crowne and vtheris priviledges and liberties quhatsumevir pertain- ing y^rto (except as is befoir excepted) in his Majesteis handis ad perpetuam remanentiam Provyding thir p^rnttis nor na clause y^rof preiudge me and my foirsaidis off our richt and dignitie of bluid pertēing to ws as air of lyne to ye said vmq¹¹ David Erle of Stratherne nor of our richt of ye remanent landis baroneis and vtheris heritages to the qlk we haue richt as air of bluid to the said umq¹¹ David Erle of Stratherne not lyand naturally and locally witheyn the said stewartrie of Stratherne and comprehendit witheyn this present renunciatioun And als I bind and obleis me and my foirsaidis if neid beis to obtain ourselvis servit retourit and saisit in ye saidis landis and erledome w^t ye liberteis and priviledges foirsaid pertain- ing y^rto as air to the said vmq¹¹ David Erle of Stratherne and ffor doing y^rof gives power to my saidis p^rors in maist ampill forme and thairef^o obleis me and my foirsaidis to iterat reforme and renew this p^rnte renunciatioun and resignatioun in sick ampill forme as may stand be law at the sicht and advyse of

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his Majesteis Advocat And for the mair securitie I
am content and consentis thir pñttis be insert and reğrat
in the buikis of Counsell and Sessioun ad futuram rei
memoriam and to that effect mākis and constitutis
. my pñors withe power to yame to compeir
for me and consent to the reğrating heirop in maner
foirsaid In witnes qrof I haue subscriyvit thir pñttis
withe my hand att Halyrudhous the twentie tua day of
Januař the yeir of God I^m.vj^c. and threttie zeiris, befoir
thir witness Sir Thomas Hoipe of Craighall knight
baronet his Ma^{ties} Advocat Sir Colein Campbell of Lun-
die knight baronet Sir James Gordoun of Lesmoir
knight and M^r W^m Maxuell writ^t heirop Sic sub^r
Monteith Thomas Hoipe witnes, Lundie witnes, J.
Gordoun witnes, Williame Maxuell witnes.

No. XI.

PATENT CONFIRMING THE EARLDOM OF
STRATHERN TO WILLIAM EARL OF
MONTEITH, 31st JULY 1631.

[Referred to in p. 41.]

CAROLUS Dei gratia Magnæ Britanniae Franciæ et Hiberniæ Rex Fideique Defensor omnibus probis hominibus suis ad quos præsentēs literæ pervenerint salutem. Sciatis quia nos animo nostro recollentes quod prædilectus noster consanguineus et conciliarius Willielmus Comes Taichiæ lie Menteth Præses nostri Secreti Concilii deservitus et retornatus existit indubitatus hæres sanguinis quondam Davidis Comititis de Stratherne sui proavi proaviæ¹ patris filii legitimi quondam Roberti Regis secundi nostri predecessoris felicis memoriæ Cui quidem Davidi Comiti de Stratherne et hæredibus suis dictus quondam Rex Robertus secundus ejus pater per duas diversas cartas unam earundem de data apud Edinburgum decimo nono die mensis Junii et anno regni sui primo et alteram earundem de data apud Perthum tertio die mensis Julii dictoque anno regni sui primo disposuit Comitatum de Stratherne cum omnibus annexis et pertinentiis ejusdem. Et quamvis præfatus Willielmus Comes Taichiæ et [Menteth] tanquam hæres prædictus ad prædictum Comitatum de Stratherne jus bonum haberet memoratus tamen Comes ex humili respectu quam erga sacrosanctam nostram personam gerit

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¹ This is an error in the Record, because not agreeable to the service.

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per literas suas renunciationis de data vigesimo die mensis Januarii anno Domini millesimo sexcentesimo trigesimo et registratas in Generali Registro secundo die mensis Martii proximo sequentis renunciavit omne jus et titulum quem ad dictum Comitatum de Stratherne habere potuit in favorem nostrum et successorum nostrorum reservatis dicto Willielmo Comiti Taichiae terris et baronia de Kilbryde aliisque in dicta renunciatione mentionatis cum hac expressa provisione quod dicta renunciatio non sit præjudicio dicto Comiti suisque prædictis de eorum jure et dignitate sanguinis ad ipsum tanquam hæredem lineæ præfati quondam Davidis Comitis de Stratherne pertinentibus prout dicta renunciatio in se latius proportionat. Et nos magnopere volentes quatinus præfatus Willielmus Comes Taichiae hæredes sui masculi et successores in jure et titulo Comitatus Jerniæ lie Stratherne gaudeant succedant et fruantur prædicto titulo loco et dignitate iis debito per dictas cartas et infeofamenta per dictum quondam Regem Robertum secundum concessas memorato quondam Davidi Comiti de Stratherne ejus filio suisque hæredibus ejusdem Comitatus de Stratherne in quantum ac titulum locum et præcedentiam iis tanquam Comitibus debitam attinet Igitur ratificavimus approbavimus tenoreque præsentium pro nobis et successoribus nostris ratificamus & approbamus præfatum titulum honorem dignitatem et locum Comitis præfato Willielmo Comiti Taichiae suisque prædictis debitum virtute dictarum cartarum per dictum quondam Regem Robertum secundum concessarum præfato quondam Davidi Comiti de Stratherne suisque hæredibus ac Volumus et concedimus quod præfatus Willielmus Comes Taichiae hæredesque sui masculi et talliæ dicti Comitatus Taichiae Comites Jerniæ et Taichiae lie Stratherne et Menteth omni tempore a futuro appellantur et vocentur Et quod gaudeant fruantur et possideant præfatum titulum

et dignitatem Comitis Jerniæ et Taichiaë in omnibus publicis comitiis conventibus et parliamentis omnibusque aliis conventionum locis cum iisdem privilegiis libertatibus gradibus et locis præfato quondam Davidi Comiti de Stratherne suisque hæredibus per dictum quondam Regem Robertum secundum ejus patrem concessis Et cum præcedentia et prioritate ante quascunque alias personas factas et creatas Comites post datam dictarum cartarum et earundem alterius omnesque alios qui antiquiora infeofamenta literas patentes et documenta pro eorum titulo et dignitate Comitatus anteriora dictis terris per dictum quondam Regem Robertum secundum prædictum quondam Davidi Comiti de Stratherne concessis producere nequeant. In cujus rei testimonium præsentibus magnum sigillum nostrum apponi præcepimus apud aulam nostram de Oatlandis ultimo die Julii anno Domini millesimo sexcentesimo trigesimo primo et anno regni nostri septimo.

Per signaturam manu S. D. N. suprascriptam
necnon manibus quorundam dominorum Scaccarii commissionariorum subscriptorum.

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No. XII.

PROCEEDINGS RESPECTING THE REDUC-
TION AND CANCELLATION OF THE
RETOURS AND PATENTS CONCERNING
THE EARLDOM OF STRATHERNE IN
1633.

[Proceedings as entered on record, the King v. Earl of Stratherne;
5th February 1633; extracted from the Register of Decreets,
Vol. 456. fo. 268.—Referred to in p. 65.]

No. XII.
PROCEEDINGS
ON REDUCTION
AND
CANCELLATION
OF RETOURS
AND PATENTS.
5th February
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Decimo quinto Feb. 1633.

“Anent the summondis raisit at the instance of Wil-
liame Erle of Mortoun, Lord Dalkeyth and Abirdour,
principall thesaurar comptroller and collector to our
Souerane Lord and thesaurer of his Hienes new aug-
mentatiounis, and Joⁿ Lord Stewart of Tracquir, his
Ma^{ties} deput in the saidis offices, and of S^r Thomas
Hoip of Craighall Kny^t, his Hienes aduocat for his
Ma^{ties} speciall entreſ, as allegit granter of the infest-
ment confirmatione and patent efterspecifeit and emitter
of the acknowldgmentis declarationis and designa-
tiounis eftermentonat, and alledgit acceptar of the
renunciatioun vnderwritin, and to quhais preiudice the
services and retouris vnderwritin war led and pro-
testatiounis yairin continit maid and admittit, and als
quha hes the vndoutit richt to the erldome of Strath-
erne, baronies of Vrquhart and Brauchwall, and vtheris
continit in the chartouris and infestmentis efterspecifeit
be actis of annexatioune or vyerwaf, and als as being
vndoutit and narrest air of bluid to vmquhile Dauid
Erle of Stratherne, quha wes on of the youngest lafull

sonis to vmquhile King Robert the Secund, his Maties
 foirgrandf^r foirgrandfris fayer, and youngest broyer to
 vmquhile King Robert the Third, eldest laifull sone
 to the said vmquhile King Robert the Secund, his
 Hienes foirgrandf^r foirgrandfris fayer of happie me-
 morie, and also at the instance of our said Souerane
 Lordis aduocat for his Hienes generall entref in sa far
 as concernis the actionis of reductione and improba-
 tioune efterspecifeit, aganis Williame Erle of Men-
 teyth, Lord Kilbryd and Kilpoint, president of the
 counsell, maker and subscryuer of the said pretendit
 renunciatioune efterspecifeit, and to quhom the
 pretendit infestmentis patent and vtheris efterspecifeit
 war maid and grantit, and at quhais instance the
 pretendit seruices and retouris efterspecifeit war led
 and deducit as air to the said vmquhile Dauid Erle of
 Stratherne, to quhom he alledgit him self to be air of
 bluid, and to the quhilk vmquhile Dauid Erle of
 Stratherne and his airis the chartouris and infest-
 mentis of the erldome of Stratherne and vtheris landis
 eftirspecifeit war maid and grantit, and aganis S^r
 Lues Lauder knight, freff principall of Ed^r, befor
 quhom the saidis pretendit seruices war led and
 deducit, and M^r Laurence, M^r Gill, M^r Joⁿ Sandi-
 landis, and M^r Joⁿ Oliphant, aduocattis, depuittis to
 the said freff principall, and M^r Joⁿ Oliphant wreitter,
 freff clerk of the said freffdome of Ed^r, and Alex^r
 Erle of Eglintoun, George Erle of Wentoun, Joⁿ Erle
 of Wigtoun, Joⁿ Erle of Carrik, W^m Vic^t of Air, W^m
 Vicount of Drumlanrig, Joⁿ Lord Erskin, James Lord
 Rof of Halket and Meluill, Archibald Lord Naper of
 Merchaustoun, Joⁿ Lord Wemes of that ilk, S^r James
 Stewart knight, S^r George Touris of Innerleyth knight,
 S^r George Forester of Corstorphin knight, and S^r James
 Ker of Cralinghall knight, personis being vpone ye
 inqueist of the saidis seruices, and S^r Joⁿ Scott of

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Scottistarvet knight, ane of the senatouris of the Colledge of Justice and director of our Souerane Lordis chancellerie, be quhom the pretendit brevis vnderwrittin war direct to the said freff and his depuittis, and be quhom the saidis pretendit seruices following vpone the saidis brevis war retourit to the chancellerie, and in quhais handis the saidis pretendit brevis and executiounis yairof with the seruices following yairvpone ar extant, and all vtheris haifand or pretendand to haif entref in the said mater, tuiching the bringing and produceing with thame befor the lordis of counsell off all and haill the infestmentis and chartouris efter following, extractit of our So. Lordis registre be the s^t W^m Erle of Menteyth, and shawin and exhibit be him to his Ma^{ties} aduocat in the moneth of July I^m. vj^c. twantie nyne zeiris: viž, the chartour and infestment maid and grantit be the said vmquhile King Robert the Secund, his Hienes predicessor foirsaid of happie memorie, to the said vmquhile Dauid Erle of Stratherne his sone, and his airis quhatsumeuir, of all and haill the said erldome of Stratherne, with frie regalitie, of deat the xix. day of Junii, and of his regne the first zeir; ane vther chartour, maid and grantit be ye said vmquhile King Robert the Secund to the said vmquhile Dauid Erle of Stratherne and his airis quhatsumeuir, of the said erldome of Stratherne and frie regalitie foirsaid, and with additione of the four pointis of the croun, of the deat the third day of Julii and of his regne the first zeir; ane vther chartour, maid and grantit be the said vmquhile King Robert the Secund to the said vmquhile Dauid Erle of Stratherne and his airis quhatsumeuir, of the said erldome of Stratherne, vpone the resignatioune of Alex^r Lieaird, of the deat the twantieane day of Marche and of his regne the fyft zeir; ane vther chartour, grantit be the said vmquhile King

Robert the Secund to the said vmquhile Dauid and his airis lauffullie to be gottin of his body, of the castell of Vrquhart and baronie of the samyn, lyand within the freddome of Inuernes, of the deat the nynetene day of Junij and the first zeir of his regne; and als ane chartour, grantit be the said vmquhile King Robert the Secund to the said vmquhile Dauid Erle of Stratherne and his airis quhatsumeir, of all and haill the castell of Brachwall, and all and haill the landis of the samyn, and all and sindrie vther landis lordschippis and richtis of landis quhatsumeir, with the pertinentis, alsweill within the erldome of Caithnes as within any vther pairt of this kingdome quhilk pertenit to Alex^r Lieaird be quhatsumeir successione, heritable falling and belanging to him be and throw his mother Matild of Stratherne, and that vpone the resignatioune of the said Alex^r, of the deat the twantie ane day of Marche and first zeir of his regne, togidder with the pretendit renunciatioune maid and grantit be the said Erle, and alledgit acceptit be our said Souerane Lord, quhairby the said Erle of Menteith, as pretendit air of bluid to the said vmquhile Dauid Erle of Stratherne, renuncit in his Hienes favouris all ry^t and tytle quhilk he nicht pretend to the said erldome of Stratherne, (excepting the landis and baronie of Kilbryd, quhilk be the said renunciatioune wer alledgit to be bruikit be the said Erle and his predicesso^{ris} be vertew of the saidis chartouris grantit to the said vmquhile Dauid Erle of Stratherne, and no vtherwais^f, and excepting his tytle and dignitie of bluid as air to the said vmquhile Erle Dauid,) quhilk renunciatioune is of the deat the xxij. day of Januar I^m.vj^c. threttie zeris, and registrat in the generall register be M^r Francis Hay keper y^rof, vpone the second day of Marche the said zeir, and alf^f producit and registrat in the buikis of exchakquer and counsell vpone the sevintene and

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twantie thrid dayis of July the said zeir Im.vj^c. threttie zeers; and siclyk tuiching the bringing and produceing with thame the pretendit brevis rasis at the instance of the said W^m Erle of Menteyth furth of the chancellerie, vnder the subscriptione of the said S^r Joⁿ Scott and his deputis, ane yairof direc^t to the fref^t of Ed^r and his deputtis for serving the said Erle as air to the said vmquhile David Erle of Stratherne, ane vther of the saidis brevis direc^t to the said fref for serving of the said Erle as air to vmquhile Euphame Countes of Stratherne, onlie dochter to the said vmquhile Erle David, and to vmquhile Patrik Grhame Erle of Stratherne, hir spous, or ather of thame, and the third of the saidis brevis direct to the said fref of Ed^r and his deputtis for serving of the said Erle as air to vmquhile Maleif Erle of Menteyth, his foirsgrandf^r guidf^r, quha is alledgit to haif bene lau^{li} sone procreat betuix the said vmquhile Euphame Countes of Stratherne and the said vmq^{le} Patrik Grhame Erle of Stratherne hir spous, togidder with the seruices following yairvpone, quhairby the said W^m Erle of Menteyth is seruit affirmatiue as air to the said vmquhile David Erle of Stratherne, and to the said Euphame Countes of Stratherne his dochter and Patrik Grhame Erle of Stratherne hir spous, or ather of thame, as lau^{lie} discendit of the said mareage, and quhairby he is seruit to the said vmquhile Melisse Erle of Menteyth, his foirgrandf^r guidf^r, with respect to the said former seruices, or as being the said vmquhile Melisse designit yairin lau^{li} sone procreat betuix the said vmquhile Euphame Countes of Stratherne and the said Patrik Grhame hir spous, togidder with the retouris of the saidis seruices extractit and drawin furth of the chancellerie vnder the subscriptione of the said S^r Joⁿ Scott and his deputtis, togidder with the clames and haill procesf of the saidis thrie seruices

of the saidis thrie brevis, haill actis instrumentis and documentis continit yairin, and speciallie the instrument document and protestatione maid yairin be our said Souerane Lordis aduocat, bering that he producit the renunciacione abouespecifeit maid be the said Erle of Menteyth in his Hienes fauo^{ris}, and protestit that the saidis seruices foirsaidis be in corroboracione of the said renunciacione and na vtherwaif, quhilk protestatione the said fref admittit, togidder with all and sindrie wreittis documentis evidentis retouris seasingis vpone retouris and vtheris testimonies and monumentis quhatsumeuir vsit and producit be the said W^m Erle of Menteyth, or his procuratouris, the tyme of the leiding and deduceing of the saidis seruices for verefeing and instructing of the said judge and inquest, or ather of thame, that the said vmquhile Melleif Erle of Menteyth was lau^{ll} sone procreat betuix the said vmquhile Euphame Countes of Stratherne and the said Patrik Grhame hir spous, or that the said vmquhile Euphame Countes of Stratherne was lafull dochter to the said vmquhile Dauid Erle of Stratherne; togidder with all and quhatsumevir vther chartouris infestmentis patentis seruices retouris judiciall actis and vtheris evidentis instrumentis and documentis quhatsumevir alledgit maid or confermit be his Ma^{ties} said vmquhile predicesso^r King Robert the Secund, or ony of his predicesso^{ris} Kingis of Scotland befor him or successo^{ris} efter him, or governo^{ris} for the tyme, to the said vmquhile Dauid Erle of Stratherne, Euphame Countes of Stratherne, Patrik Grhame hir spous, and to the said vmquhile Meleif Erle of Menteyth, or to ony vtheris yair predicesso^{ris} or successo^{ris} to quhom the said W^m Erle of Menteyth may succed jure sanguinis, or conceavit in yair favouris or in favouris of the said W^m Erle of Menteyth, or maid to quhatsumevir vther personis, quhilk may be the ground of the saidis seruices for

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instructing of his discent and bluid yairin declarit, and quhairby he may verefie and prove that the said vmquhile Maleif Erle of Menteyth was lau¹¹ sone procreat betuix the said vmquhile Euphame Countes of Stratherne and Patrik Grhame hir spous, or the said vmquhile Euphame Countes of Stratherne to haif bene lau¹¹ dochter to the said vmquhile Dauid Erle of Stratherne; and siclyk tuiching the bringing with thame and produceing the pretendit chartour and infestment grantit be his Ma^{tie} to the said W^m Erle of Menteyth vnder his Hienes grit seill, of the deat the threttene day of May I^m. vj^c. threttie zeris, quhairby his Ma^{tie} ratefeit to and in favouris of the said W^m Erle of Menteyth, as pretendit air of bluid to the said vmquhile David Erle of Stratherne, the twa chartouris aboue-writtin maid and grantit be his Ma^{tis} said predicessor King Robert the Secund to the said Dauid Erle of Stratherne, ane quhair of the baronie of Vrquhart, deatit the xix. day of Junii and of his regne the first zeir, and the viher of the castell of Brachwall and landis yairof, and of all vther landis alsweill within the erldome of Cathnes as within any vther pairt of the kingdome quhilk pertinit to vmquhile Alex^r Lieaird, and falling to him be his mother Matild of Stratherne, of the deat the xx. ane day of Marche and of his regne the fyft zeir, and alf contening ane new gift of the saidis landis baronies and others foirsaidis to the said William Erle of Menteyth, his airis meall and assignais, in maner continit in the said charto^r, with the precept and instrument of seasing following yairvpone, togidder with his Ma^{tis} patent vnder his Hienes grit seill maid and grantit in fauouris of the said W^m Erle of Menteyth, of the deat the last day of July I^m. vj^c. threttie ane zeiris, quhairby his Ma^{tie}, in respect and consideratione that the said Erle was seruit and retourit air to the said vmquhile Dauid Erle of Stratherne, and in

respect of the renunciacione foirsaid maid be him to his Ma^{tie}, with reseruacione of his tyle and dignitie as air to the said vmquhile Erle, hes gwin grantit and confermit to the said W^m Erle of Menteyth and his airis maill the tyle hono^r and dignitie of Erle of Stratherne in all tymes cuming, as in the said patent of the deat foirsaid at mair lenth is continit; togidder with all and sindrie vther chartouris infestmentis preceptis instrumentis of seasing, with all seruices and retouris quhairby ony of his predicesso^{ris} hes bene seruit airis to vtheris, in sa far as yai may appeir to instruct the seruices abouewrittin, or to ratefie approve and homologat the samyn, and all vther evidentis infestmentis richtis and tyillis, maid be his Ma^{tie} or his predicesso^{ris} to the said Erle or his predicessoris to quhom he may succeid jure sanguinis, of the said erldome of Stratherne, lordship and baronie of Vrquhart, and landis of Brachwall, and vtheris landis aboue writtin, contenit in the saidis chartouris or ony of thame, or be the quhilk he may instruct himself to be air of bluid to the said vmquhile Dauid Erle of Stratherne, or to the said vmq^{le} Euphame Countes of Stratherne his alledgit dochter, or to the said vmq^{le} Patrik Grhame alledgit Erle of Stratherne as discendit of the mareage betuix the said vmq^{le} Euphame and the said Patrik; to be seen and considerit be the saidis lordis, and to heir and sie the saidis hail wreittis chartouris infestment renunciacione seruices retouris acceptationis acknowldgmentis designationis declarationis of bluid and confirmationis yairin continit, quhairby it may appeir that our said So. Lord hes grantit acknowldgit declarit and designit the said W^m Erle of Menteyth to be air or narrest of bluid to the said vmquhile Dauid Erle of Stratherne, or to the said Euphame his said alledgit dochter, or as confermit be ony of the chartouris abouespecifeit in fauouris of the

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said W^m Erle of Menteyth as narrest air of bluid to the said vmquhile Erle Dauid, to be retreatit rescindit and declarit null and voyd in all tyme cuming, and to be ciuilie and lau^{llie} improvin omni modo quo de jure; and the saidis personis being vpone the inqueist of the saidis seruices to be decernit to have committit wilfull, at the leist ignorant, erro^r, and to haif incurrit penam temere jurantium super assisa; and alf to heir it fund and declarit that the said Erle hes na ry^t to the said erldome of Stratherne, lordship and baronie of Vrquhart, castell of Brachwall, and vtheris landis abouespecifeit, continit in the chartouris maid to the said vmq^{le} Erle Dauid, and that the said W^m Erle of Menteyth is not nor can not be air or narrest of bluid to the said vmquhile Dauid Erle of Stratherne nor to the said vmq^{le} Euphame his dochter and Patrik Grhame hir spous; and siclyk to heir and sie it fund and declarit that our said So. Lord is vndoutit narrest air of bluid to the said vmquhile Dauid Erle of Stratherne, and hes the onlie vndoutit richt to the said erldome of Stratherne, lordschip and baronie of Vrquhart, and castell of Brachwall, with the haill vther landis abouespecifeit, continit in the saidis chartouris maid to the said vmq^{le} Dauid Erle of Stratherne and his airis, ffor the ressonis and causf li^t [libelled?], as the saidis summondis at mair lenth beris; the said S^r Thomas Hoip of Craighall knight baronet, aduocat to our Souerane Lord for his Ma^{ties} entref in the said mater, compeirand personallie, and als as pro^r for the remanent personis abouewrittin, and the saidis haill personis defenderis, with all vtheris haifand or pretendand to haif entref in the said mater, being all lau^{llie} summondit to this actione, oftymes callit, and no^t compeirit, the lordis of counsell continewis the saidis summondis, &c. vnto the twantie ane day of Februar instant, with continuacione of dayis, and

ordanis the saidis persewaris to haif līes to warne the saidis defenderis to bring with thame and produce in presence of the saidis lordis all and sindrie the foirsaidis infestmentis and chartouris abouespecifeit of the landis and erldome of Stratherne, baronies of Vrquhart and Brachwall, maid be the said vmquhile King Robert the Secund to the said vmq^{le} Dauid Erle of Stratherne and his airis quhatsumeir, to the quhilk vmquhile David Erle of Stratherne the said W^m Erle of Menteyth is alledgit to be the vndoutit air of bluid, togiddir with the said pretendit renunciacione alledgit maid be the said Erle of Menteyth, quhairby he as air of bluid to the said vmq^{le} Dauid Erle of Stratherne renuncit in his Ma^{tis} and his successouris fauouris the said erldome of Stratherne, with the thrie pretendit brevis foirsaid rasit at the instance of the said W^m Erle of Menteyth furth of the chancellarie, ane for serving of him as air to the said vmq^{le} Dauid Erle of Stratherne, ane vther for serving of him air to the said vmq^{le} Euphame Countes of Stratherne, onlie dochter to the said vmquhile Erle Dauid, and to vmquhile Patrik Grhame Erle of Stratherne hir spous, or ather of thame, and the third ffor serving of the said Erle as air to the said vmquhile Meleif Erle of Menteyth, togidder also with the seruices abouespecifeit following yairvpoun, with the retouris abouespecifeit of the saidis seruices, with the claimes and haill procesf of the saidis thrie services of the saidis thrie brevis, haill actis instrumentis and documentis continit yairin, and speciallie the instrument document and protestatione maid yairin be our said So. Lordis aduocat, bering that he producit the renunciacione aboue specifeit, maid be the said Erle of Menteyth in his Ma^{tis} fauouris, and protestit that the saidis seruices be in corroboracione of the said renunciacione, and na vtherwaif, togidder with all and sindrie wreittis documentis evidentis retouris seasingis

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vpone retouris and vtheris testimonies and monumentis quhatsumeuir vsit and producit the tyme of the said seruice, with all and quhatsumeuir vtheris chartouris infestmentis patentis services retouris judiciall actis and vther evidentis instrumentis and documentis quhatsumeuir particularlie and generallie abouespecifeit, and siclyk to produce with thame the said pretendit infestment and chartour grantit be our said Souerane Lord to the said W^m Erle of Menteyth vnder the grit seill, quhairby his Hienes ratefeit to the said Erle, as air of bluid to the said vmquhile Dauid Erle of Stratherne, the twa chart^{cris} abouewrittin, maid be the said King Robert the Secund to the said vmq^{le} Dauid Erle of Stratherne, and contining ane new gift of the saidis landis baronies and vtheris foirsaidis to the said W^m Erle of Menteyth, his airis mail and assignais quhatsumeuir, with the precept and instrument of sesing following yairvpone, togidder with the foirsaid patent vnder the grit seill, maid and grantit to the said Erle of Menteyth, togidder with all and sindrie vtheris chartouris infestmentis preceptis instrumentis of seasing, with all seruices and retouris quhairby ony of his predicessouris hes bene servit air to vtheris."

EXTRACTS FROM LORD DURIE'S "DECISIONS OF THE LORDS OF SESSION" (pp. 682—684).

"The Kings Majesty contra E. of Strathern,
20 March 1633.

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"The Kings Majesty pursuing the Earl of Strathern, for Production and Improbation of all Writs and Charters under the Great Seal, and Retours of any of his Predecessors, of and concerning the Earldom of

Srathern. The Lords found, in the consideration of these Writs called for to be produced; That albeit Charters under the great Seal, might be extant in the King's publick Register, and that Retours might be extant in the Chancellary, whereby it might be doubted, if they ought to be Decerned, to make no faith for not Production, before the said Registers were sought by the Parties, pursuing such causes, and that it were made known to the Lords, if any such Writ were extant or not, by the Officers intrusted with the Custody of the Registers, Rolls, and Director of the Chancellary; for if they were extant, it might be thought that the Pursuer should produce them; And that they could not be taken away for not production, as said is, albeit the Defenders called were absent, or did compear, and not produce them, even as Writs Registrat in the Books of Session will not be Decerned to make no faith, for not Production nor Reduced, albeit the Defender produce them not.

“ The Lords found, that the Pursuers of such Causes, either of Improbation, or of Actions of Reduction, are not holden to search the Registers, nor Chancellary, for such Writs, viz. Charters or Retours, nor to extract or produce them; albeit they were Extant there; but if Parties Defenders called to that effect, did not satisfie the Production thereof themselves, that the Certification of the Summons should, and ought to pass against them; and this Case of Evidents differs from Cases of Decrets of Session, or Writs Registrat, in the Books of Session, which are known thereby, to have passed *in rem judicatam*, whereby that which is Decerned by the Judge, cannot be taken away for not Production, seeing their Clerks ought to be Answerable therefore, and to Extract the same, or to exhibit the Warrant Registrat; whereas the other foresaids Charters or Retours are original Securities, properly concerning the Parties,

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wherein no other person has interest; and in this Case of the King's, this was the rather found, because the Earl compeared and did not alledge this. Actor. Advocatus Regis. Alter. Mowat, Prymrose and Neilson. Hay, Clerk. Vid. Feb. 17, 1624. E. Mar. Vid. infra March 22nd, 1633."

" March 22nd. 1633.

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"In the Cause mentioned 20th March, betwixt the King and the Earl of Strathern, which was both an Action of Improbation and Reduction; and whereby the King and his Theasurer and Advocat, craved Reduction of two Retours and Services, whereby this Earl of Monteith was served nearest heir of blood to umquhile Eupham, Countess of Strathern, and Patrick Graham her spous, and also to David Earl of Strathern, son to King Robert the Second, to the which David, the said Eupham was designed by the said Defender, in the same Retours, to be the only bairn and daughter, and of which Eupham the Defender was retoured the just, lawful, nearest descendent, in manner, and conform to the Progress exprest in the Retours; and also the K. craved all Writs to be Reduced, whereby it might be qualified, that the said Progres was instructed to the Assysers, and which yet might instruct the same; or that Eupham was Daughter, and only Bairn to David, or that Patrick Graham was her Spouse, and that the Defender is nearest Descendant to them in that Marriage, and that Melissus, to whom the Defender alledged himself to be Heir was the Son Procreat betwixt Eupham and Patrick Graham, as the Retour bears; And generally all Writs which might qualifie any such thing, were called to be Reduced, and Improven, and also a Renunciation of the Lands of the Earldom of Strathern made by the Earl of

Monteith Defender, in favours of the King, and which was accepted by the King's Advocat for the King, wherein the Earl designed himself nearest Heir to the Persons foresaids, which Renunciation preceeded the Retours; Likeas at the Services, the Advocat produced this Renunciation, and took Instruments, that the Services should proceed for Corroboration of the Renunciation made by him as Heir, and also a Charter granted by the King, which also preceeded the Services was desired to be Reduced, whereby the King gave to the Defender some of the Lands of the Earldom of Monteith, which were Excepted in the foresaid Renunciation. In which Charter the King confirmed the Defender, and gave the Lands to him as Heir to the saids Persons. The Reasons of Reduction were, that the Defender was not that Person who could be Heir to them, and was neither qualified to the Assyse to be Heir, nor can be yet so shown to be descended, and nearest to them; but by the contrair, that the King was Heir to Earl David, seing he died without Succession, as all the other Brethren of Earl David died without Succession; and the King's Majesty was nearest, having lineally descended of Robert the Third, Brother to Earl David; of which King Robert there was only Succession extant: and as to the Renunciation made by the Defender as Heir, and accepted eo nomine by the King and his Officers, and the foresaid Charter of the Tenor foresaid, which preceeded the Service, with a Patent of Honour of the Earldom, and Dignity of Strathern, given to him as Heir foresaid to David, since the Service, they were craved to be Reduced, because they proceeded upon wrong Information made to the King, affirming him to be Heir, who was not truly so, and the King being now better Informed might Reduce these Deeds, and could not be prejudged by such Confessions made, when the contrair

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in verity is truly tryed, and his officers omission cannot prejudice the King; but yet he might be heard, notwithstanding of any such sinistrous affirmation made to the Prince, whereupon the Writs proceeded. Thir Reasons were sustained, and Found Relevant to Reduce the Retours and Services; and it was Declared, that the Defender was not Heir, neither could be to these Persons; and that he was not of Blood to them, but Declared, and it was Found that the King was sole and only Heir: And it being Alledged, that the King had no Interest to quarrel the Retours, in respect of the Writs foresaids, wherein he confest the Defender to be Heir, and that his officers Compearing at the Service, was a Consent thereto. The Exception was Repelled, and the King's Interest sustained, notwithstanding of these Writs; and Found that the King might now quarrel the same, and the wrongous Information, and omission of the officers could not prejudice the King; and in this Process, Error being also concluded against the Assisers, they were Assoizied from all Error and Punishment, because it was Found, that they had just and probable Cause to have Served him Heir, where the King's Advocat Compeared the time of the Service, and did not oppone thereto; but protested that the Proceeding therein, should be for Corroboration of the Renunciation made in the King's favours, whereby in effect *tacite* he consented thereto, and which was Found sufficient to liberat the Assysers, together with the Charter granted by the King, bearing that Designation, whereby it appears, that the officers are hereby taxed for suggesting to the King, that which was un-warrantable. Actor. Advocatus. Alter. Mowat, Neilson & Prymrose. Hay Clerk. In this cause the Thesaurer-Deput sat, and Judged, Reasoned, and Voted, albeit he was Pursuer."

No. XIII.

ORIGINAL LETTERS FROM OR RESPECT-
ING WILLIAM SEVENTH EARL OF MON-
TEITH AND FIRST EARL OF AIRTH.
1630 TO 1639.

[Collated with the Originals in the Register Office at Edinburgh,
22nd December 1840, by Alexander Macdonald, Esq.]

FROM THE EARL OF MONTEITH TO THE EARL OF
MORTON, DATED 18th SEPTEMBER 1630.

“ To my very hono^{ble} good lord the Erlle of Morton,
“ These.

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“ My nobill lord, I know you doo not expect that I
am a vretter of newes, yow shall have them from wthers
and it will save me a labour. I hade his Ma^{ties} hand
to all these commissions yo^r lo. knowes I caryed up,
immediatly efter my comming to court. I most stay a
fourtnicht for the busines of the fishing.

“ I have send doune with this berar to my lord
Chancelar his signator for the collectione of the Tax-
atione. I am his friend and servant, and he shall find
me so. I am no complimenter, nor doo I love idle
professiones without effects. Q^r I profest ther shall I
be. My power is small, bot no man shall exceid me in
desyr to doo service to those too quhom I promist it.
One of these I honour most is your self, and shall at all
ocationes q^rin I may apeir give prooff that I am

“ Yo^r Lo most faithfull servant,

“ Theobalds
18 Sept. 1630.”

MONTEITH.”

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“ As to that busines of the Thes^r Deputie, my master, as in all wther things, hes doone me richt in that.

“ I know you ar wyse and a noble trew patriot. Sir Williame Alex^r, your treu friend, will lett yow know sum things I will not vrett, and quhat he omitts to vrett you shall know by me at meitting.”

FROM THE EARL OF MONTEITH TO THE EARL OF
MORTON, DATED 6th OCTOBER 1630.

“ To the R^t hono^{ble} my speciall good lord the Erlle
of Morton

“ These

“ My nobill lord, I know your trew freind, S^r W^m Alex^r, hes vrettin to you q^t is worthy your knowledg from this.

“ I hade a paper from the King given him by S^r Ar^d Echison q^{ch} I gave to S^r W^m, and I know he hes send it to you. I hope by this the Chancelar will know how busy S^r Ar^d is, and I assure yow that the Chancelar may be confident that he hes a treu and reall freind of S^r W^m Alex^r, so that he is not only yours, bot a freind to those you respect. As for my self, tak me as you find me, q^{ch} shal be

“ Yo^r faithfull freind

and servant,

MONTEITH.”

“ Londoun,
6 Octob^{re} 1630.”

FROM THE EARL OF MONTEITH TO THE EARL OF
MORTON, DATED 27th OCTOBER 1630.

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WILLIAM
EARL OF
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"To my hono^{ble} good lord the Erll of Mortoun,

"These.

"My nobill lord, I cam to this toun the 26 of this instant, and shalbe very glade to have the contentment to sie you. I have sumthings of importance q^{ch} can admit no delay, to speak to yo^r lo. I have lykways sum letters from our M^r to yow. I entreat yow to come over so shoone as possiblie you may, that my lord Chancelar and your lo. may resolve in sum things q^{ch} requyres a present dooing. I heir my lord Chancelar will be heir this nicht, wtherways I had vrettin too him. Make hast and command

"Yo^r lo. affectionat servant,

"Halirudhous,
27 Ocb^re 1630."

MONTEITH."

FROM THE EARL OF STRATHERN APPARENTLY TO THE
EARL OF MORTON, DATED 1st AUGUST 1632.

"My nobill lord, so shoone as I received your letter, q^{ch} wes at eight a klok in the morning, I went to courte and delivered your letter to his Ma^{tie}, and he promised to vrett immediatlie efter denner, and accordingle I wes not slow to putt the pen in his hand; bot as he wes begining to vrett the Queene came, and desyred he should go presentlie to Richmond with hir, q^{ch} made him assure me that he should not faille to vrett the morrow efter, for he stayed in Richmond that nicht

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wntill it wes ten a clock. This day after dinner I desyred him to remember of the letter, q^{ch} he presentlie vrett, and you will receave heirwith inclosed. I took ocatione presentlie to speak to his Ma^{tie} of the wther busines concerning the lord Chancelar, and shall follow it so far as I can, q^{ch} with ane wther busines, q^{ch} I will imparte to you at meitting, will draw me to go on the progres to Beawlieu. You and I hes both reasone to thank God that we have so good, so juste, and so kynd a master, q^{ch} beleive me, is beyond expressione, as I will, at more lenth show you quhen we shall meitt. This nicht, quhen I was going home, his Ma^{tie} gave me ane paper, given him, as I suppose, by Mr. George Nicoll. It is almost a booke, but I shall copie it and send it to yow with Anthonie Alex^r, q^a goes poste to morrow; bot I intreate yo^r lo., according to our resolutione, to lett none know any thing of this untill I sie yow, ther is much into it concerning his Ma^{ties} revenews, especiallie in Orkney and Zetland; bot if any shall excede yow and me in ane faithfull desyre to do our master faithfull service we are not worthy to live.

“ I will end this letter with that assurance, that no man shall have ane more faithfull frend than zow of

“ Yo^r lo. oblised servant

“ Oatlands,
1 August 1632.”

STRATHERNE.”

“ His Ma^{tie} gave me the letter yow vrett to him, q^{ch} I burned immediatly.”

FROM JOHN LORD TRAQUAIRE TO THE EARL OF
MORTON, DATED "29th AUGUST," AND APPARENTLY
IN 1632.

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LETTERS FROM
OR RESPECTING
WILLIAM
EARL OF
MONTEITH.
1630 to 1639.

" To the most hon^{ble} the Earle of Morton, Lord High
Treasurar of Scotland.

" Most hon^{ble} and my verie gud Lord,

" Our journey was soe easy, y^t we came not to Lun-
done befor freyday last at nicht, the 27 of this Instant.
This day we intend to Hampton-court, and from thence
to find the King q^evir he be. I can mak yo^r Lo^p no
accompt as yit of any bussines. I hear the King is
weill pleased w^t ye cariage of the conven^one, notw^tstand-
ing sume have bein vigilant aneuch to informe not
altogider according to the treuth. The Lord Gordon
hade a man heir four days befor ye Earle of Monteiths
man came; but foolish speiches are not worth the
chassing. It will be fursday befor the Earle of Carlill
be at court at soonnest. The Marquis of Hamilton is
looked for at London, 'bussie about his employment to
Swayn, as is thought, q^r of seing as yit I have no farder
knowledge yen generall report, I think it not worthy
yo^r Lo^{ps} taking notice of to any. The Lord Naper is
gone yesterday to Court, full of hopes. The Laird
Thorninton met w^t him sume two dayes befor we came
to London; he says to ye Earle of Monteith y^t he is so
far from thinking upon any treatie for demitting of his
place, y^t be ye contrair he hes warrand y^t ye King will
not put him to it, and desyris to be still served be him,
as a man most fitting for y^t service. I hear he hes
sume inform^ones alsoe from sume below. And as is
raported heir, if he get hearing to his expecta^one he
will give every ane of y^r Lo^{ps} yo^r awne takes. But of
thir and all vyer businessis q^{lks} sall fall w^tin the compas
of my knowledge, y^r lo^p sall hear at Lenth w^t my awne

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servand, soe soone as I have bein w^t the King, in the
mean tyme I am

“ y^r Lop^s faithfull servand,
TRAQUAIRE.”

“ London,
Agust 29.”

FROM THE EARL OF STRATHERN TO THE EARL OF
MORTON, DATED 20th NOVEMBER 1632.

“ To the R^t hon^{ble} my very good Lord the Erll of
Morton,

“ These,

“ My nobill lord, I may say now nulla dies sine linea.
This hes lerned me to be a vretter. This ould berar
goes faster then I, for I will mak no more haste nor
is fitting, for ane sair bak, for all the busines. I dout
not bot our freind Sir Jhone Hay hes tould you all I
could say if I wer with you, wse your awin discretione
and freindship to

“ Yo^r lo. trew servand,
STRATHERNE.”

“ Morpeth,
20 Nob^r 1632.”

“ I pray you leave a lyne or too in sum postmaster's
hous by the way, that I may know yow ar living.”

FROM LORD TRAQUAIRE APPARENTLY TO THE EARL OF
MORTON, DATED 3rd FEBRUARY, AND APPARENTLY
IN 1633.

“ My most hon^{ble} gud Lord,

“ It is not unknowen unto your Lo^p quhat profes-
siones of freindship the Earle of Monteith made unto

my Lord Chancellor at his last being at Court, but quhat effects hes followed, if he hade no other accuser then his awne rasch tong, I dare give it no worse termes, wald mak too clear unto the world how fare his actiones hes bewrayed the sinceritie of his intentiones, at least in his professiones of freindschip to my Lord Chancellor, how ydle he hes bein in his speaches heir since his homcumming, still as it ware making querrell d'Allegmagne, is too notor. But now of lait, since he fand, as I take it, he was not leik to be red of the Chancellor at Court, he hes bein verie earnest to mak me, and as he sayis sume of the better sort of these he beleives to be my Lord Chancellers faithfull freinds & servands (for I must use his awne words) beleive that he is more desyrous of nothing then of my Lord Chancellers freindschip; he sayis he sies visibly how fare he hes bein abused be Nithisdail and uthers, and is desyrous that your Lo^p and my Lord Chancellor both may be witnessis, how fare his actiones at this tym sall differ from these people ther wayes. He sayes his first adresse sall be to my Chancellor, and be him he will desyr to mak his first access to his Majestie, and in nothing may concerne ather his awne particulare or the publik he sall be reserved from the Chancellor, but be his advys and concurrence is resolved to proceed if he find it any wayes acceptable. I have hard as much promised of befor. He hes pressed this uther from me, that befor his upcumming, be me and sume uthers quho I know he hes spoken to the same effect, thes mistakings betwixt my Lord Chancellor and him nicht in sume kynd be removed, at least in soe fare as he nicht find the feilds fair. For ane amends making in tym cumming, and that he nicht be the better assured, that my letter sould cum to my Lord Chancellor's hands befor his cuming ther, yesternicht he sent for me to his awne hous, and wald have me promise

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I sould wryte with same bearer, and heirwith I have bein bold to acquaint your Lo^p, least upon the sight of my uther letter the Chanciller might possibly mistak my freadome in that subject. I confes this much, I wische seriously, that although my Lord Chanciller hes too just reason to neglect him, yit if it ware possible that my Lord wald forget byganes, & lat his awne follies be the first witnessis to honest men how litle respect he deserves (for at best I know he hes given too just grunds to my Lord Chanciller to neglect him) yit if in this sort at his first upcuming he sall seam to seik my Lord Chanciller his friendship, and not find soe much as the externall cariage fair, it may, at least to these quho knawis not the trew reason therof, that it suffer its awne misinterpretatione.

“The Lord Erskyn and he gois tomorrow to the Lady Marques of Hamilton, and upon freyday he intends to be in Broxmoth, upon Setterday in Dunglas, and upon Sunday at nicht in Bervik. I know he hes spoken the Earle of Roxbruch that he sould wryt of this same kynd to my Lord Chanciller alsoe; but possibly his wisdom may mak him forbear any such purpos, although possibly he hes not bein displeased that I sould doe the same. And soe if I have not acted the parrett richtly, I hope my Lord Chanciller will pardon me, ather till meeting or the nixt occasion, that I may mak my awne part gud.

“I think it needles to troubill your Lo^p with all the ydle occurrences we have heir. It is sayed that the Lord Erskyn is leik to get the heretrix of . . . smond be your Lo^p and the Chancellers meanes; but many of the wyser sort dois not beleive the same, although a Noble Lady assured me sche saw writ for the same. We marveled much at S^r Johne Scot's getting of S^r Andro Kers place in Session, but the Lord Monteith

assures us it is but for the interim, untill he speak with the King. I doubt not but ther will be numbers busie aneuch to snatch for his pretended place of the guard, but if ther be any such appearance that the Kings Majestie has any such intentione, your Lo^p will be pleased to remember of your servand, if this or any uther thing sall offer, quhilk may any wayis inable him to testife how really he is your Lo^{ps} trew and faithfull servand

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EARL OF
MONTEITH.
1630 to 1639.

TRAQUAIR."

" Ed^r Feb. 3."

FROM LORD TRAQUAIRE TO THE EARL OF MORTON,
DATED "MARCH 16," AND EVIDENTLY IN 1633.

" For the most hon^{ble} the Earle of Morton, Lord High
Treasurer of Scotland.

" Most hon^{ble} & my noble Lord,

" Exspecting to have sein a finall conclusion of this bussines, concerning y^e reduction of ye Earle of Monteith's service¹, I have differred wryting thir dayes bygane, but the difficulteis y^t have aryssin therin, partlie be difference of opinionones betwixt ye Kings advocat and the wther threi, and partlie be ye difficulteis q^{lks} the Lords of Session seames to conceave in the bussines, hes delayed ye same. The Kings advocat w^t ye uther threi did subscribe a Informa^one conforme to quhich ye soumonds of reduction ware to be libelled, notw^tstanding q^of as they alledge ye soumonds are in sume thinges different from yat subscribed informa^one. The Lords of Session alledges the busines is not fairlie caried for ye Kingis securitie, for notw^tstanding ye

¹ Lord Traquaire, then Treasurer Depute, "sat and judged, reasoned and voted" in the cause, "albeit he was pursuer." Vide pp. lxii and lxxvi ante.

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advocat findes himself satisfied with ye production in ye mater of reduction, yit ye Lords finding sundrei writes nayer produced nor caled for, q^{lks} have ayer bein sein to sume of themselves or confessed be sume of the parteis, they seam yit to think y^t except all be produced y^t was produced to ye Inqueist at least, ye proces is not faire nor secure. Efter much disputing ye Lords ware content y^t upon my Lord Strathernes declara^one of quhat was produced to ye service or ye advocats upon ayer of ye tuo yer productiones of q^t was produced yer, they wald rest satisfied, in soe fare as concerned ye production in ye reduction. Heirupon ye advocat being caled in, he condescended upon a great many writes sean to him q^{lks} ye Earle himself denyes, and heirupon yer hes bein sume hote speaches betuixt yem. The advocat, in presence of ye haill lordes, confessed he hade sean befor ye service a charto^r q^rby it was evident y^t Euphan was only dochter to Earle David. A second, q^rby it was evident y^t Patrik grahame was mareid to Euphan. A third, q^rby it was clear y^t Melisse was Patrikes sonne; and from Melisse to ye Earle of Stratherne, now present, ther seames to be no question of succession. None of thir formar threi are called for in ye soumounds of Reduction, and sume of ye Lords thinkes yat if thay ware produced ye reduction wald be ye more difficill. The Earle thinkes ye advocat hes not used him weel, yat without his knowledge sould have condescended upon these writes; and upon ye uyer part it is thought ye advocat hes done it, to mak it appear yt ye service was legally deduced. Q^t middes we will find upon tuysday nixt¹ to facilitat the bussines, I know not. It hes bein madnes to have attempted such yings; but seing they have bein ons moued, I

¹ i. e. the 22nd of March, on which day the Court of Session reduced the Retour, Services, &c. of the Earl of Monteith as heir of David Earl of Strathern. Vide pp. lxxiv—lxxvi ante.

wische sume such cours may be taken as may secure o^r masters interest q^tevir it be. Reduction upon ye soumonds lybelled, nayer yit certificaⁿe upon not production in ye improbaⁿe is not thought sufficient, except sume way be fund for cancelling and destroying of all writes y^t may concerne yis business y^t can be fund ather in the registers or els q^r. And this I wische our master sould not trust altogider to his awne judgement, but yat it may be done be ye advyce of sume of his faithfull servands. We have hade many odde passages in the bussines q^{lks} I dare not intrust to paper. I beleive he intendes not to sture from hence schortlie; at least to he sei a full and finall end to this bussines, q^{rin} I have not bein wanting to my powar to doe him service, but I fear I serve a thankles master; but howsoever I sall still be

“ Your Lop^s faithfull servand,

“ Marche 16.”

TRAQUAIRE.”

FROM SIR JOHN SCOT OF SCOTSTARVET TO THE EARL
OF MORTON, DATED 7th MAY 1633.

“ To the Richt honorable my very good Lord The Erle
off Mortoun Lord Thesaurar off Scotland &c.

“ Thais.

“ My very honorable good Lord

“ Pleas your Ll. that according to your Ll. comandiment and my promise I heave sent to yow heirin inclosit the doubill off the Chartour of the erledome of Stratherne grantit be King James the first to his uncle Walter erle of Atholl of the said erledome of Stratherne efter the daith of David, quherby it is evident that it was then in his Majesties handes and

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at his dispositioun. Quhen I sall heave the occasioun
to sie your Ll. I sall informe yow moir particularlie
in all thais materis till quhilk tyme and evir I sall
continew

" Your humble Servitour
SCOTTISTARVET."

" Innerweik
7 May 1633."

FROM THE EARL OF AIRTH TO THE EARL OF MORTON,
DATED 18th MAY 1633.

" To my very hono^{ble} good lord the Erll of Morton.
" These

" My Lord, I have send yow heirwith ane inform-
atione. I intreat you to perwse it seriously, for in
good faith it is a trew one. I will not use many
words. Suffer me not to gett wrong; this is all I
desyre, and by it yow will please God, doo good service
to his Ma^{tie}, and oblishe

" Yo^r lo. affectionat
freind and servant,
AIRTH."

" Corstorphine,
18 Maij 1633."

EXTRACT FROM A LETTER FROM THE EARL OF TRA-
QUAIRE¹ TO THE EARL OF MORTON, DATED 23rd
NOVEMBER, AND EVIDENTLY IN 1633.

" My hono^{ble} good Lord

" My Lord Chanciller hes resolved that the first
Consill day in November sall be appoynted for de-
clairing the Kings pleasure to the Earle of Airthe, and

¹ Lord Traquair was created an Earl on the 23rd of June 1633.

at that same tyme he intendes to call to him these Advocats have had a hand in the reduction of the service, and be ther advyce to resolve upon quhat farder is to be done in that busines.

"I doubt not but your Lo^p hes considered how much it may concerne his Majesteis service that the Presidentschip of the Session be filled with a gud able and honest man, And how much it may concerne your Lo^p that it be sean your freind is preferred, I remit to your Lo^{ps} awne consideratione, Innerpeffer and Fothranes are both honest men and your Lo^{ps} faithfull freindes and servands, if any of them be preferrid it is right aneuch, but if yow may have it at your optione I dare say Sir George Halyburtone of Fothranes is the man. In all that hous sall give best satisfacione to the world," &c.

- "Your Lo^{ps} faithfull Servand

"Ed^r Nov. 23."

TRAQUAIRE."

FROM THE EARL OF AIRTH TO JAMES LIVINGSTONE
OF BEILL, DATED 18th JUNE 1639.

[From the Original: obligingly communicated by James Maidment, Esq.]

"For my worthy friend Jamis Levingstoune of Beill,
one of His Ma^{ties} bed chamber.

"Richt worthy and loving freind I intreate zow to hasten this berars dispatch, and the morrow, quhen we meite zow shall finde that zow have done ane Courtesie to ane thankfull man; in the meane tyme and ever I rest

"Yo^r trew frend

"Berwick,
18 Junij 1639."

to serve zow

AIRTHE."

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EARL OF
MONTEITH.
1630 to 1639.

FROM THE EARL OF AIRTH TO JAMES LIVINGSTONE
OF BEILL, DATED 17th SEPTEMBER 1639.

[From the Original: obligingly communicated by
James Maidment, Esq.]

“ To my honored an loving freind James Livingstoun
of the Beill, one of his Ma^{ties} bedchamber

“ These.

“ Richt worthie and loving freind, the reasone that
I have beine so long in vretting to his Ma^{tie} waes that
I resolved to be silent wntill I micht have sumthing
of importance to vrett; and altho I know his Ma^{tie} is
advertised by many of the procedure of this assemblie,
zit he hath hade no shorter relatione then that quhich
I send heirwith, quherfor I intreate zow to delyver
this wther letter to his Ma^{tie}, and desyre ane answer;
for I have sende this berar expressly for it, and his
Ma^{ties} effaires doo requyre that the answer may be
returned with diligence. I have send zow heirin ane
litle scroll quhich centaineth the most materiall things
quhich ar doone in this assemblie: it is only for zour
owin wse, and therfor efter zow have redd it, burne it;
and I hope his Ma^{tie} will doo so with my letter and
the paper within it. I have send zow that money long
er this, bot that Williame Gray hath beene this thrie
weekes in Angous and wilbe heir the morrow, and I
assure zow he shall imēdiatly send ane warrand to his
factor thair to pay zou, and I shall dispatch it uith
ane man of my owin; for altho his Ma^{tie} be owing me
far greater soumes, zet I shall never for such ane
trifle as is owing me have such ane base thocht as

to seeke allowance of such ane soume, therfor expect it. And lett not this berar nor any living know that there is any thing of this kynd betuix zow and me, now I must intreate that as zow love the goode of his Ma^{ties} effaires, and as zow doo respeck ane in particular, to hasten bake this berar and intreate his Ma^{tie} to vrett the answer to my letter, and I beseech zow to inclosse his Ma^{ties} letter within one of zour ouin to me. So uishing yow all happines I shall ever rest zo^r treulie affectionat freind to serve zow.

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EARL OF
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1630 to 1639.

“AIRTHE.”

“17 Sept. 1639.”

No. XIV.

PATENT OF THE EARLDOM OF AIRTH,
21st JANUARY 1633.

[From the Original now in the possession of the Duke of Montrose at Buchanan ; printed in the Minutes of Evidence on the Claim to the Earldom of Airth, pp. 4, 5.]

No. XIV.
PATENT OF THE
EARLDOM OF
AIRTH.

CAROLUS Dei gratia Magne Britanie Francie et Hibernie Rex fideique defensor omnibus probis hominibus suis ad quos p̄ntes literę pervenerint salutem Sciatis quia nos compertum habentes quod quondam Jacobus primus Rex Scotorum predecessor noster illustrissime memorie per suam cartam sub ipsius magno sigillo de data sexto die mensis Septembris anno Domini millesimo quadringentesimo vigesimo octavo et anno regni sui vigesimo secundo dedit concessit erexit et disposuit quondam fideli et predilecto suo consanguineo Melisso comiti de Montethe et heredibus suis totas et integras terras infra Montethe in dicta carta mentionatas et easdem erexit in totum et integrum liberum comitatum omni tempore affuturo comitatum de Montethe nuncupandum prout in dicta carta de data predicta latius continetur cuiquidem quondam Melisso comiti de Montethe confisus et predilectus noster consanguineus et consiliarius Willielmus comes de Montethe nostri secreti consilii preses indubitatus et legitimus heres lineę et successionis deservitus et retornatus existit et nos animo nostro recolentes eximia egregia et fidelia servitia nobis per memoratum nostrum confisum et predilectum consanguineum et consiliarium Willielmum comitem de Montethe dicti nostri secreti consilii presidem ex animi nostri sententia proque bono

publico regni nostri et constanti ejus proposito in iisdem perseverandi prestita et impensa que nos e benigno nostro beneplacito memori mente reservare statuimus ut alii illius exemplo ad talia fidelia servitia prestanda instigentur Et interea temporis nos volentes erigere terras et baroniam de Airthe ad dictum comitem hereditarie pertineñ in unum liberum comitatum cum titulo et dignitate comitis de Airthe modo postea mentionato igitur ereximus tenoreque pñtium erigimus ad et in favorem prefati Willielmi comitis de Montethe et heredum suorum terras et baroniam de Airthe predicti in unum liberum comitatum omni tempore affuturo comitatum de Airthe nuncupandum ac eidem univimus et annexavimus tenoreque pñtium unimus et annexamus comitatum de Montethe absq̃ prejudicio omnimodo prefate carte de comitatu de Montethe concesse per prefatum quondam nostrum preclarissimum predecesorem Jacobum primum Regem Scotorum felicitis memorie prenominato quondam Melisso comiti de Montethe de data dicto sexto die mensis Septembris anno Domini millesimo quadringentesimo vigesimo octavo vel alicujus partis seu puncti ejusdem in ipsius pleno vigore robore et integritate ut prius remansure nullo modo prejudicate seu derogate sicuti nos ex nostra certa scientia proprioque motu fecimus et constituimus tenoreque pñtium facimus et constituimus memoratum Willielmum comitem de Montethe et heredes suos comites de Airthe ac eidem comitatui univimus et annexavimus tenoreque pñtium unimus et annexamus dictum comitatum de Montethe cum omnibus libertatibus privilegiis et immunitatibus ad liberum comitatum pertineñ et specialiter cum loco prioritate et presidentia dicto comiti suisque predecessoribus tanquam comitibus de Montethe debitis in quibuscunq̃ parliamentis conventibus publicis comitiis et alio modo quocunque ante quoscunque comites factos erectos aut creatos a dicto

No. XIV.
PATENT OF THE
EARLDOM OF
AIRTH.

No. XIV.
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AIRTH.

sexto die mensis Septembris anno Domini millesimo quadringentesimo vigesimo octavo qui est data dicte carte memorati comitatus de Montethe per dictum quondam Jacobum primum nostrum illustrissimum predecessorem felicis memorie præfato quondam Mellisso comiti de Montethe et heredibus suis ut dictum est concess̃ et volumus concedimus et ordinamus quatenus prefatus Willielmus comes de Montethe heredesque sui predicti nomen stilum titulum et dignitatem comitum de Airthe omni tempore affuturo habeant iisdemq̃ fruantur et gaudeant idq̃ cum loco prioritate et presidentia ante omnes alios comites iis antea debitis virtute dicte carte dicto quondam Melisso comiti de Montethe suisque predictis prefato sexto die mensis Septembris anno Domini millesimo quadringentesimo vigesimo octavo predicto concess̃.

In cujus rei testimonium p̃ntibus magnum sigillum nostrum apponi precepimus apud regiam nostram de Whitehall vigesimo primo die mensis Januarii anno Domini millesimo sexcentesimo trigesimo tertio ac anno regni nostri octavo.

Per signaturam manu S.D. N. Regis suprascriptam.

(Seal appended.)

(Indorsed.)

“Written to the Great Seal 28 Martii 1633.

(Signed) SCOTTSTARVATT.”

“Sealed at Hã hõs 28 Martii 1633.

(Signed) M. D. SYBBALD.”

(Indorsed.)

“Diploma Willielmi comitis de Airthe, &c. 1633.”

No. XV.

TABLE SHEWING THE LIMITATIONS OF PEER-
AGES OF SCOTLAND, GRANTED BETWEEN
THE YEARS 1600 AND 1707.

[This Table was printed in the Court of Session in the Roxburgh Competition of Brieves; and again in an Appendix to the Appeal Case in the House of Lords, to which the name of Mr. Thomas Thomson, one of the Counsel in the Cause, is attached. — Referred to in p. 101.]

KINGS REIGNS AND YEARS.	Heirs Male of the Body.	Heirs Male.	Heirs Male whomsoever.	Heirs Male of the Body, whom failing, Heirs Male whomsoever.	Heirs whomsoever.	Peculiar.	TOTAL.
JAMES VI. From 1600 to 1625	4	19	7	4	2	—	36
CHARLES I. From 1625 to 1649	13	42	4	4	2	2	67
CHARLES II. From 1660 to 1685	24	6	4	7	6	3	50
JAMES VII. From 1685 to 1688	5	3	—	2	—	1	11
WILLIAM III. From 1688 to 1701	7	1	4	7	4	1	24
ANNE. From 1701 to 1707	9	8	2	1	—	—	20
	62	79	21	25	14	7	208
To Heirs of the Body	- -	- -	- -	- -	- -	- -	1
							209

No. XV.
LIMITATIONS
OF PEERAGES OF
SCOTLAND,
1600 to 1707.

No. XVI.

REMARKS ON THE DEATH OF LORD
KILPONT, COMMUNICATED TO SIR
WALTER SCOTT, BART., BY ROBERT
STEWART OF ARDVOIRLICH, ESQ.

[Printed in the "Legend of Montrose," and referred to in p. 104.]

No. XVI.
REMARKS ON
THE DEATH
OF
LORD KILPONT.

"ALTHOUGH I have not the honour of being personally known to you, I hope you will excuse the liberty I now take, in addressing you on the subject of a transaction more than once alluded to by you, in which an ancestor of mine was unhappily concerned. I allude to the slaughter of Lord Kilpont, son of the Earl of Airth and Monteith, in 1644, by James Stewart of Ardvoirlich. As the cause of this unhappy event, and the quarrel which led to it, have never been correctly stated in any history of the period in which it took place, I am induced, in consequence of your having, in the second series of your admirable Tales on the History of Scotland, adopted Wishart's version of the transaction, and being aware that your having done so will stamp it with an authenticity which it does not merit, and with a view, as far as possible, to do justice to the memory of my unfortunate ancestor, to send you the account of this affair as it has been handed down in the family.

"James Stewart of Ardvoirlich, who lived in the early part of the 17th century, and who was the unlucky cause of the slaughter of Lord Kilpont, as before mentioned, was appointed to the command of one of several independent companies raised in the Highlands at the commencement of the troubles in the reign of Charles I.; another of these companies was

under the command of Lord Kilpont, and a strong intimacy, strengthened by a distant relationship, subsisted between them. When Montrose raised the royal standard, Ardvoirlich was one of the first to declare for him, and is said to have been a principal means of bringing over Lord Kilpont to the same cause; and they accordingly, along with Sir John Drummond and their respective followers, joined Montrose, as recorded by Wishart, at Buchanty. While they served together, so strong was their intimacy, that they lived and slept in the same tent.

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“ In the meantime Montrose had been joined by the Irish under the command of Alexander Macdonald; these, on their march to join Montrose, had committed some excesses on lands belonging to Ardvoirlich, which lay in the line of their march from the west coast. Of this Ardvoirlich complained to Montrose, who, probably wishing as much as possible to conciliate his new allies, treated it in rather an evasive manner. Ardvoirlich, who was a man of violent passions, having failed to receive such satisfaction as he required, challenged Macdonald to single combat. Before they met, however, Montrose, on the information and by advice, as it is said, of Kilpont, laid them both under arrest. Montrose, seeing the evils of such a feud at such a critical time, effected a sort of reconciliation between them, and forced them to shake hands in his presence, when, it is said, that Ardvoirlich, who was a very powerful man, took such a hold of Macdonald's hand as to make the blood start from his fingers. Still, it would appear, Ardvoirlich was by no means reconciled.

“ A few days after the battle of Tippermuir, when Montrose with his army was encamped at Collace, an entertainment was given by him to his officers, in

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honour of the victory he had obtained, and Kilpont and his comrade Ardvoirlich were of the party. After returning to their quarters, Ardvoirlich, who seemed still to brood over his quarrel with Macdonald, and being heated with drink, began to blame Lord Kilpont for the part he had taken in preventing his obtaining redress, and reflecting against Montrose for not allowing him what he considered proper reparation. Kilpont of course defended the conduct of himself and his relative Montrose, till their argument came to high words, and finally, from the state they were both in, by an easy transition, to blows, when Ardvoirlich, with his dirk, struck Kilpont dead on the spot. He immediately fled, and under the cover of a thick mist escaped pursuit, leaving his eldest son Henry, who had been mortally wounded at Tippermuir, on his death-bed.

“His followers immediately withdrew from Montrose, and no course remained for him but to throw himself into the arms of the opposite faction, by whom he was well received. His name is frequently mentioned in Leslie’s campaigns, and on more than one occasion he is mentioned as having afforded protection to several of his former friends through his interest with Leslie, when the King’s cause became desperate.

“The foregoing account of this unfortunate transaction, I am well aware, differs materially from the account given by Wishart, who alleges that Stewart had laid a plot for the assassination of Montrose, and that he murdered Lord Kilpont in consequence of his refusal to participate in his design. Now, I may be allowed to remark, that besides Wishart having always been regarded as a partial historian, and very questionable authority on any subject connected with the

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motives or conduct of those who differed from him in opinion, that even had Stewart formed such a design, Kilpont, from his name and connections, was likely to be the very last man of whom Stewart would choose to make a confidant and accomplice. On the other hand, the above account, though never, that I am aware, before hinted at, has been a constant tradition in the family; and, from the comparative recent date of the transaction, and the sources from which the tradition has been derived, I have no reason to doubt its perfect authenticity. It was most circumstantially detailed as above given to my father, Mr. Stewart, now of Ardvoirlich, many years ago, by a man nearly connected with the family, who lived to the age of 100. This man was the great-grandson of James Stewart, by a natural son John, of whom many stories are still current in this country, under his appellation of *John dhu Mhor*. This John was with his father at the time, and of course was a witness of the whole transaction; he lived till a considerable time after the Revolution, and it was from him that my father's informant, who was a man before his grandfather John dhu Mhor's death, received the information as above stated.

"I have many apologies to offer for trespassing so long on your patience; but I felt a natural desire, if possible, to correct what I conceive to be a groundless imputation on the memory of my ancestor, before it shall come to be considered as a matter of history. That he was a man of violent passions and singular temper, I do not pretend to deny, as many traditions still current in this country amply verify; but that he was capable of forming a design to assassinate Montrose, the whole tenor of his former conduct and principles contradicts. That he was obliged to join the opposite party, was merely a matter of safety, while

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Kilpont had so many powerful friends and connections able and ready to avenge his death.

“ I have only to add, that you have my full permission to make what use of this communication you please, and either to reject it altogether or allow it such credit as you think it deserves; and I shall be ready at all times to furnish you with any farther information on this subject which you may require, and which it may be in my power to afford.

“ Ardvoirlich,
15th January 1830.”

No. XVII.

EXTRACTS FROM A LETTER FROM
MR. PATRICK SCOTT "TO THE RIGHT
HON. MY LADY ANN OGILVY," WIDOW
OF SIR GEORGE ALLARDICE; DATED
EDINBURGH, 2nd NOVEMBER 1709.

[Referred to in p. 113.]

THE Letter, from which the following are extracts, was written a few weeks after the death of Sir George Allardice. They shew that the pretensions of the family to the Earldom of Monteith were then generally known; and that their pecuniary difficulties were so great as to account for the claim to the Dignity not having been established.

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EXTRACTS FROM
A LETTER FROM
MR. P. SCOTT
TO LADY ANN
OGILVIE,
2nd November
1709.

" Madam,

Ed^r, 2^d Nov^r. 1709.

" The Earle of Seafeld¹ being much hurried and taken up befor his going away, is the reason the Inventars and other papers are not sooner returned. His Lo^p went off yesterday morning and signd all y^e papers very pleasantly, which was a great satisfaction to me that all was right done. His Lo^p promised to write to yo^r La^p on y^e rode. But if he do not he said he could say no more than repete what was in the papers. I have no doubt yo^r La^p will find by the factory that it is designed to give yo^r La^p all the ease possible, and to keep you from all maner of strait or hazard. And as for yo^r La^{ps} own jointure you have power by the factory to reserve it, for we leave it to

¹ Brother of Lady Ann Ogilvie.

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another time to settle the same, whether yo^r La^p will adhere to yo^r contract of marriage, or take you to your Charter. Yo^r La^p knows very well the difference. And I doubt not also yo^r La^p will see yo^r self safe enough from all burden or hazard upon y^e plenishing.

“ The other paper with relation to the Childrens aliment, is to save any pretence they may have from yo^r La^{ps} alimentering them voluntarily, and of yo^r self. And we think they will allow y^r arents (till maters be better with y^e familiy) for satisfaction of y^r aliment w^{ch} will be a great advantage to James.¹

“ And as for his own, I hope yo^r La^p shall not be straitned so long as he shall please to stay with me. So I hope yo^r La^p will indeavour to lay aside all anxiety and too much thoughtfulness and care. God, who has hitherto provided, can yet do y^e same. And I trust in him, he'll never forsake you nor yours.

* * * * *

“ My Lord Seafield has spoke extreme kindly to James. He has yet gott no letter ether from the Thesaurer or Sir Isaac Newton. He has only one from M^r Montgomrie in D. Queensberries name, wher in he sayes the Duke is not to push any thing of that post till his Lo^p go up. His Lo^p was also pleased to tell us that Earle of Isla had said to him, that if he can prevaill to gett it for his nephew he would write to his brother the Duke of Argile not to push it for his uncle. I have also another ground of hope as to that, that Argile and his uncle have never been in good terms since his father died. But none of these are any sure ground of expectation, tho I have no doubt the Earle of Seafield will do his best.

“ I think yo^r La^p may write to him so as to be at London as soon as himself, and put his Lo^p in mind of

¹ James Allardice, her eldest son.

the wrestling life you are like to have, unless something be done for y^e family. His Lo^p knows well enough y^e whole circumstances of the family. I laid all fully befor him, particularly the appearing difficulties to yo^r La^p, who expressd a very great concern for you; I hope he will not forgett it. I think your sons clame and right to the title of Monteith should be a good argument why the Queen should take care and provide for him.

“ If yo^r La^p please, you may also write to M^r Philp. It will not be the worse that my Lord be somewhat importuned.”

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EXTRACTS FROM
A LETTER FROM
MR. P. SCOTT
TO LADY ANN
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2nd November
1709.

No. XVIII.

SEAL OF DAVID EARL OF STRATHERN,
IN NOVEMBER 1375.

[Vide p. 13. ante.]

No. XVIII.
SEAL OF
DAVID EARL OF
STRATHERN,
November
1375.



No. XIX.

NOTES ON THE TERM "EARLDOM" IN
SCOTTISH CHARTERS; BY PETER CHRIS-
TIAN, ESQ.

THE term *Earldom* has two distinct meanings: the one primary, the other metaphorical. Primarily and literally, it signifies *the territorial possessions* of an Earl, as the territories of the Monarch are called his Kingdom. Metaphorically, and in popular phrase, it is used to signify *the title and dignity of Earl*.

It is only in its primary and literal sense that the term 'Earldom' is known in legal instruments in Scotland. Different parcels of lands being constituted, or, as is technically said, being *erected*, into an Earldom, carried certain important jurisdictions and privileges. These, it has been argued, included *omnimodam potestatem*, while, on the other hand, it has been contended that the erection of lands into a *Comitatus* or *Dominium* did not necessarily infer any jurisdiction except what is competent to any Baron, *an Earldom being only a higher denomination of Barony*. (Morr. Dict. voce Clause, p. 2267.)

But what may have been the *extent* of these powers and privileges, is a question which does not bear on the fact that the term *Earldom* in the language of the law of Scotland expresses a certain character of lands forming one entire territory; and it may not be immaterial to remark, that, barring restrictions in entails, an Earldom, with all the privileges by law

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attaching to it, is and always was an alienable estate, which might be held and the inherent privileges exercised by any one, although not of the degree of a Peer.

Such being in Scotland the legal signification of the word 'Earldom,' and such, in a legal sense, the nature of an Earldom, it follows, that in no other sense, and for the purpose of no other description, could it be admitted into any instrument drawn up in the forms of Scotch law. Probably, indeed, at a remote period, it was not recognized, even in the popular language of Scotland, as signifying metaphorically the *title and dignity of Earl*; and, in point of fact, in the colloquial language of Scotland at the present day the word 'Earldom' would be more readily understood as referring to territory; but, at all events, its legal signification being fixed and precise, and importing real property with extensive territorial jurisdiction and powers, no Scotch lawyer or conveyancer, fit or at all likely to be entrusted with the framing of instruments so important as Patents of Nobility or Charters, would in such instruments make use of the word in any other than its legal signification.

Now the Charters and Patents relating to the Strathern, Monteith, and Airth Peerages are all Scotch instruments, drawn up in the technical language of Scotch law, obviously by Scotch lawyers or conveyancers; and accordingly when, in these instruments, the honors of Peerage are mentioned as having been or being granted, they are described as such *in terminis*, whereas when the word *Earldom* occurs, it has reference to lands which are or had been erected into that entire territory called *Earldom*, with the powers and privileges inherent in it.

If this legal signification of the word *Earldom*

be admitted (which it is supposed no Scotch lawyer would dispute), that term, when used in the instruments in question, must be taken and understood as applicable only to lands or *territory*; and if, in the Airth Patent, the word *territory* were substituted for the word *Earldom* wherever it occurs, most of the objections raised by the Lord Advocate to Mr. Barclay Allardice's claim will be obviated.

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